

House Ad Hoc Select Committees with Legislative Authority: An Analysis

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Summary

The House can readily create an ad hoc (temporary) select committee by approving a simple resolution that contains language establishing the committee—giving a purpose, defining membership, and detailing other aspects. The House may create a study committee, with directions to make recommendations for legislation, or it may grant *legislative authority* to the select committee—authority to report legislation to the House. This report analyzes the use, results, components, and attributes of House ad hoc select committees with legislative authority.

There have been four ad hoc select committees with legislative authority created in the last 35 years, which are examined in this report—

- Ad Hoc Select Committee on the Outer Continental Shelf (94th-95th Congresses),
- Ad Hoc Select Committee on Energy (95th Congress),
- Select Committee on Homeland Security (107th Congress), and
- Select Committee on Homeland Security (108th Congress).

The principal explanation offered in creating each of the four select committees with legislative authority was that their creation solved jurisdictional problems. The proponents in each case indicated that multiple committees claimed jurisdiction over a subject and that the House would be unable to legislate, or at least to legislate efficiently, in the absence of a select committee. The creation of the Outer Continental Shelf select committee may have been an early test case of new House rules that recognized the potential need for such a committee. The Energy select committee and the Homeland Security select committee (107th Congress) centralized important aspects of committee decision making to develop comprehensive legislation on subject matter that was widely diffused in House committees. The reason advanced for creating the Select Committee on Homeland Security in the 108th Congress was slightly different: it provided a transition committee responsible for homeland security while the House decided whether and how to reorganize its committees to accommodate the new Department of Homeland Security.

In creating a select committee with legislative authority, considerations include what legislative authority to grant, jurisdiction and referral, the relationship between the select committee and the standing committees of jurisdiction, reporting deadline, membership and chairmanship, resources made available to the select committee, floor and post-passage consideration of the legislation reported by the select committee, and the select committee's life-span.

In developing legislation matched to a strategic policy goal, a number of advantages can accrue to the House by using an ad hoc select committee with legislative authority, including efficiency, transparency, a new forum, coherence, and cohesiveness. A select committee, however, cannot guarantee speed after the committee phase, majority support, compromise and comity, or bicameral agreement. Some factors that might better ensure the effectiveness of a select committee are its bipartisan creation, leadership support for its work, the support of standing committees, adequate time for deliberation, and a single purpose for the select committee's existence and work.

The Permanent Select Committee on Intelligence is not analyzed in this report since it is a permanent, not an ad hoc, committee.

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Introduction

The House can readily create an ad hoc select committee¹—to consider measures or matters that fall within the jurisdiction of two or more standing committees, to take action on measures or matters that standing committees have not considered, or for another reason. To create such a committee, the House approves a simple resolution, or incorporates language creating a select committee into another resolution, such as the ones reported by the Rules Committee or the House Administration Committee. The resolution may create a study committee, with directions to make recommendations for legislation, or it could grant *legislative authority* to the select committee—authority to report legislation to the House.²

If the select committee is authorized to report legislation, the legislation could be considered on the floor without action by the standing committee(s) with jurisdiction, or it could be referred to some or all of the standing committee(s) with jurisdiction, whether before or after the select committee's consideration. In establishing select committees in the past, the House has carefully defined a select committee's legislative authority and its relationship to the standing committees of jurisdiction.

In addition to resolutions that might be reported from the Rules or House Administration Committee, other current authority and procedures for creating and assigning Members to select committees *with legislative authority* date to the Committee Reform Amendments of 1974.³ Section 101 of the Committee Reform Amendments authorized the Speaker to—

...refer the matter to a special ad hoc committee appointed by the Speaker with the approval of the House (from the members of the committees having legislative jurisdiction) for the specific purpose of considering that matter and reporting to the House thereon....

Today, House Rule XII, dealing with the referral of measures and matters, allows the Speaker to—

...refer the matter to a special, ad hoc committee appointed by the Speaker with the approval of the House, and including members of the committees of jurisdiction, for the specific purpose of considering that matter and reporting to the House thereon....⁴

The sole change from the original language concerns membership, changing the language to “including members of the committees of jurisdiction” from “from the members of the committees having legislative jurisdiction.”⁵

In addition, House Rule I, cl. 11 gives appointment power for certain committees to the Speaker: “The Speaker shall appoint all select, joint, and conference committees ordered by the House. At any time after an original appointment, the Speaker may remove Members, Delegates, or the

¹ “Ad hoc” is used in Rule XII to indicate a committee existing for one, temporary purpose—a duration of one Congress or less. “Special” is also used in Rule XII to describe an ad hoc committee, but “select” is the term most commonly used in describing or naming such a committee.

² Walter Kravitz, *Congressional Quarterly's American Congressional Dictionary*, 3rd ed. (Washington, DC: CQ Press, 2001), p. 136.

³ H.Res. 988, agreed to in the House October 8, 1974. In the 104th Congress, similar language was added to Rule X related to special ad hoc *oversight* committees. Section 203(a) of H.Res. 6, agreed to in the House January 5, 1995. This rule appears in House Rule X, cl. 2(e).

⁴ House Rule XII, cl. 2(c)(4).

⁵ This change was effected in the House rules changes and recodification, H.Res. 5, agreed to in the House January 6, 1999. See “Recodification Committee Print,” *Congressional Record*, vol. 145, part 1 (January 6, 1999), pp. 154-155.

Resident Commissioner from, or appoint additional Members, Delegates, or the Resident Commissioner to, a select or conference committee.” The Speaker’s authority to appoint members of select committees has existed in House rules since 1880. Authority for the Speaker to remove or add members to select and conference committees after the initial appointment of members was added in the 103rd Congress.⁶ By custom, the minority leader proposes to the Speaker the names of minority-party Members to be appointed to a select committee.

Referral Changes

One reason for including the change related to select committees in the Committee Reform Amendments was another change contained in this legislation. The Committee Reform Amendments supplanted the existing referral system, whereby a measure was referred to a single committee,⁷ with a new system that became known as “multiple referral” and providing the Speaker with referral options:

Every referral of any matter...shall be made in such manner as to assure to the maximum extent feasible that each committee which has jurisdiction under clause 1 [of Rule X] over the subject matter of any provision thereof will have responsibility for considering such provision and reporting to the House with respect thereto. ...the Speaker may refer the matter simultaneously to two or more committees for concurrent consideration or for consideration in sequence (subject to appropriate time limitations in the case of any committee after the first), or divide the matter into two or more parts (reflecting different subjects and jurisdictions) and refer each such part to a different committee....⁸

The rules change created three forms of multiple referral, which became known as *joint referral* of a measure to more than one committee, *sequential referral* to one committee and then to another or others, and *split referral* of specific parts of a measure to specific committees. Proponents of allowing committees with a jurisdictional stake in a measure to have an opportunity to consider the measure nonetheless recognized that there could be circumstances under which more centralized committee consideration might be desirable. In those circumstances, the House could create an ad hoc select committee, to which the Speaker could refer legislation or other matters.⁹

⁶ Paragraph (7) of H.Res. 5, agreed to in the House January 5, 1993.

⁷ Wm. Holmes Brown and Charles W. Johnson, *House Practice: A Guide to the Rules, Precedents, and Procedures of the House*, ch. 6, § 8 (Washington, DC: GPO, 2003), pp. 174-175. See also U.S. Congress, House, *Committee Reform Amendments of 1974*, report to accompany H.Res. 988, 93rd Cong., 2nd sess., H.Rept. 93-916, pt. 2 (Washington, DC: GPO, 1974), pp. 56-57. (Hereafter, *Committee Reform Amendments of 1974*, H.Rept. 93-916, pt. 2.)

⁸ H.Res. 988, § 101.

⁹ *Committee Reform Amendments of 1974*, H.Rept. 93-916, pt. 2, pp. 4, 58-59.

The House later amended the time limits language in the referral rule to allow the Speaker to also impose a time limitation on the first committee or committees to which a measure had been referred. Para. 13 of H.Res. 5, agreed to in the House January 4, 1977. Rep. Jim Wright, “Rules of the House,” *Congressional Record*, vol. 123, part 1 (January 4, 1977), p. 55. A Speaker subsequently announced a policy on referral related to time limits: “The Chair will also exercise his authority in particular situations to designate a primary committee among those to whom a bill may be jointly referred and may impose time limits on committees having a secondary interest following the report of the primary committee.” Speaker Thomas P. “Tip” O’Neill Jr., “Announcement by the Speaker,” *Congressional Record*, vol. 129, part 1 (January 3, 1983), p. 54.

While Rule XII, cl. 2 and its predecessor rule allow the Speaker to “make such other provision as may be considered appropriate” in referral decisions, clause 2(c)(5) states the Speaker’s general authority to impose time limitations for committee consideration, beginning in the 106th Congress (1999-2001) upon the reorganization of this rule within the recodification of House rules: “[the Speaker] may subject a referral to appropriate time limitations[.]” The commentary accompanying this rule’s reorganization stated: “Also retained is the Speaker’s broad authority under the precedents to

When the Republican majority organized the House in the 104th Congress (1995-1997), the rules package adopted changed referrals to direct the Speaker to designate a committee of primary jurisdiction when a measure was referred to more than one committee. Referral to second or other committees under this process has been referred to as “additional initial referral.”¹⁰ Sequential and split referrals, in addition to referral to an ad hoc committee created by the House, remained as referral options.¹¹ In the 108th Congress (2003-2005), the Speaker was authorized *not* to designate a primary committee “where he determines that extraordinary circumstances justify review by more than one committee as though primary.”¹²

Advantages and Disadvantages

The House has sometimes created a select committee to bring focus to a specific, significant issue. When jurisdiction over subject matter was so fragmented or overlapping that no single committee could claim either established or leading jurisdictional responsibility, leaders and issue proponents might have perceived the development of a coordinated approach to most likely occur through the use of a select committee. Since select committees with legislative authority may be designed in a number of ways, including in their relationship to the standing committees and their reporting authority, leaders and issue proponents might have perceived advantages of efficiency and expeditiousness in using a select committee. Leaders and issue proponents might also have made political determinations that a strategic policy goal might best be achieved through a select committee since committee members are chosen by the Speaker, and a select committee might be more responsive to the majority leadership or majority sentiment in the House than specific standing committees might be.

Creating a select committee also provides additional committee slots, especially chair and ranking minority member positions. Top select committee positions could be filled with Representatives lacking the rank or seniority to merit such an assignment on a standing committee. On the other hand, leaders and Members might believe that such positions call for previous or current committee leadership experience to gain consensus or guide a measure through the legislative process. The chair and ranking minority member could be drawn from one of the committees of jurisdiction or from outside that set of committees.

A decision on membership may nonetheless generate controversy. Should membership include representation solely from the standing committees with jurisdiction? Should there be representation from each of the affected committees? Which other interested Representatives might serve as members? What states or regions must be represented? What caucuses or viewpoints within each party must membership reflect? What ratio of majority to minority is desired or desirable by each party? Final authority to weigh these considerations and make appointments rests with the Speaker.

There are also disadvantages to creation of a select committee. A select panel may duplicate, or intrude on, the efforts and jurisdictional prerogatives of one or more standing committees. A select committee’s recommendations or work product, once reported, might be opposed, watered down, or ignored by the standing committees, thereby obviating the select panel’s original purpose. Service on a select committee places an additional workload burden on individual

impose time limitations on committees, including a limitation on the duration of the initial referral.” “Proposed New Rules [Recodification Committee Print],” *Congressional Record*, vol. 145, part 1 (January 6, 1999), p. 155.

¹⁰ Walter J. Oleszek, *Congressional Procedures and the Policy Process*, 7th ed. (Washington, DC: CQ Press, 2007), pp. 87-88

¹¹ Section 205 of H.Res. 6, agreed to in the House January 4, 1995.

¹² Section 2(i) of H.Res. 5, agreed to in the House January 7, 2003.

Representatives and on the distribution of work in the House generally. Although select committees create additional opportunities for more Representatives, they also tend to add tension to the legislative process.

Recent History

Select committees have not been extensively used in recent years, however, despite proposals made or discussed in each Congress. The House has been hesitant to create new select, special, or even joint committees, and four long-existing select committees with oversight authority were discontinued by the House in the 103rd Congress (1993-1995). There have also been attempts in both the House and Senate to abolish existing joint committees.¹³

There have been four ad hoc select committees with legislative authority created since 1974—

- Ad Hoc Select Committee on the Outer Continental Shelf (94th-95th Congresses),
- Ad Hoc Select Committee on Energy (95th Congress),
- Select Committee on Homeland Security (107th Congress), and
- Select Committee on Homeland Security (108th Congress).

The Permanent Select Committee on Intelligence is not included in this group or this analysis since it is a permanent committee.¹⁴

The balance of this report is divided into three parts. In the next part, the creation and organization of each of the four select committees is examined. An analysis of similarities and differences in key aspects of the select committees, along with observations concerning these facets, appears in the second part. The final part of conclusions analyzes the reasons why the House might choose to employ a select committee and some factors in their success.

Past Ad Hoc Select Committees

The principal explanation offered in creating each of the four select committees with legislative authority was that their creation solved jurisdictional problems. The proponents in each case indicated that multiple committees claimed jurisdiction over a subject and that the House would be unable to legislate, or at least legislate efficiently, in the absence of a select committee. The reason advanced for creating the Select Committee on Homeland Security in the 108th Congress was slightly different: it provided a transition committee responsible for homeland security while the House decided whether and how to reorganize its committees to accommodate the new Department of Homeland Security.

Members of the standing committees of jurisdiction held all of the seats but two on the Outer Continental Shelf select committee and dominated seats on the Energy select committee. The two more recent select committees were not so constituted. The Homeland Security select committee

¹³ An alternative to a select committee is a joint committee, a panel comprising Representatives and Senators. Created by concurrent resolution or statute, joint committees have rarely been given legislative authority. Only one joint committee in the last more than 50 years, the Joint Committee on Atomic Energy, has had legislative authority. The creation of a joint committee raises several concerns, including the need to obtain the concurrence of the Senate; the willingness of the House and Senate to share responsibility with the other chamber; the allocation of legislative authority to the committee; and the allocation of authority within the committee. For background information on the Joint Committee on Atomic Energy, see CRS Report RL32538, *9/11 Commission Recommendations: Joint Committee on Atomic Energy—A Model for Congressional Oversight?*, by Christopher M. Davis.

¹⁴ See CRS Report RL32525, *Congressional Oversight of Intelligence: Current Structure and Alternatives*, by Frederick M. Kaiser.

in the 107th Congress comprised only members of the party leadership. The 108th Congress Homeland Security select committee included members serving on nearly every other House committee, and no committee or small set of committees dominated the membership.

Each of the select committees had a defined relationship to the standing committees of jurisdiction, ranging from nearly complete independence to, arguably, equality. The relationship between the Energy select committee and the Homeland Security select committee (107th Congress) and the standing committees was carefully defined, but standing committees had a much more influential role in the legislation reported by the Energy select committee.

Ad Hoc Select Committee on the Outer Continental Shelf

Congressional action on outer continental shelf legislation was precipitated by the oil spill in the California's Santa Barbara Channel in January 1969; the regulatory patchwork that had not kept up with technological developments in oil exploration and production; the so-called Arab oil embargo of 1973; federal executive actions to increase domestic oil supplies through increased leasing on the outer continental shelf; and other factors. With passage of a bill by the Senate in the 93rd Congress (1973-1975) to amend the Outer Continental Shelf Lands Act of 1953, and action on a related Senate bill anticipated in the 94th Congress, House proponents of action on outer continental shelf legislation proposed the creation of a select committee to better ensure the House acted promptly.¹⁵

The legislative history of this select committee is interesting since the committee was authorized in two different Congresses. When one Congress ended without the select committee's legislation having become law, the House re-established the select committee in the succeeding Congress. In the 94th Congress (1975-1977), the select committee reported legislation that passed the House. However, congressional action ended when the House recommitted a conference report on the legislation to the committee of conference. In the 95th Congress (1977-1979), a bill was reported and enacted into law.

Creation

The House created the Ad Hoc Select Committee on the Outer Continental Shelf by privileged resolution on a voice vote—

...to consider and report to the House on the bill H.R. 6218, a bill to establish a policy for the management of oil and natural gas in the Outer Continental Shelf; to protect the marine and coastal environment; to amend the Outer Continental Shelf Lands Act; and for other purposes, and on any related matter on this subject within the jurisdiction of the three committees named in part (b) of this section which may hereafter be referred to it by the Speaker.¹⁶

The resolution designated a specific bill and purpose, although it provided the Speaker with discretion to refer related matters within the select committee's jurisdiction. Another section of the resolution required the select committee to report by January 31, 1976—giving the select

¹⁵ U.S. Congress, House, Ad Hoc Select Committee on the Outer Continental Shelf, *Outer Continental Shelf Lands Act Amendments of 1976*, report to accompany H.R. 6218, 94th Cong., 2nd sess. H.Rept. 94-1084 (Washington, DC: GPO, 1976), pp. 47-79.

¹⁶ Section 1(a) of H.Res. 412, agreed to in the House April 22, 1975. H.Res. 412 was called up as a privileged resolution.

committee a little over nine months to complete its work.¹⁷ In yet another section of the resolution, the expiration of the select committee was established “upon the completion of the legislative process, including final disposition of any veto message....”¹⁸ The resolution stated that the select committee was allowed to use staff of the standing committees from which the select committee’s members were chosen,¹⁹ although additional resources were later authorized. The three named committees referenced were Interior and Insular Affairs (now Natural Resources), Judiciary, and Merchant Marine and Fisheries (the relevant portions of jurisdiction now largely belonging to Natural Resources and Transportation and Infrastructure). The Speaker was authorized to name members of the select committee and to designate one of them as chair.²⁰

Representative John M. Murphy, a senior member of the Merchant Marine and Fisheries Committee and the chair of the select committee after its creation, advocated the select committee’s creation:

We in the House face a situation where at least six and perhaps even more committees have relevant jurisdiction over the development of our oil and gas reserves in the Outer Continental Shelf. The establishment of this select committee will prevent major jurisdictional problems which would occur because of vast overlapping jurisdictions in these areas. The membership of this select committee is made up of members from the three committees which have jurisdiction in this area.²¹

The select committee was unable to report by January 31, 1976, and the deadline was extended two times in the 94th Congress.²² The select committee reported a bill on May 4, 1976, which passed the House, and was sent to conference with a related Senate bill. The House voted first on the conference report, and recommitted it to conference. That ended action in the 94th Congress.

The select committee was reauthorized in 95th Congress.²³ H.R. 1614, embodying the bill as reported from the committee on conference in the 94th Congress, was named in the resolution, and a reporting deadline of the end of the first session of the 95th Congress was designated. The select committee was successful in the 95th Congress in reporting and seeing enacted the Outer Continental Shelf Lands Act Amendments of 1978.²⁴

Membership

The panel was slated by the establishing resolution to have 16 members, although that number was increased by the Speaker by unanimous consent on May 6, 1975, to 19 members.²⁵ The ratio

¹⁷ H.Res. 412, § 4(a).

¹⁸ H.Res. 412, § 5.

¹⁹ H.Res. 412, § 3.

²⁰ By custom, the minority leader would propose to the Speaker the names of minority-party Members to be appointed to the select committee.

²¹ Rep. John M. Murphy, “To Establish an Ad Hoc Select Committee on Outer Continental Shelf,” *Congressional Record*, vol. 121, part 9 (April 22, 1975), pp. 11261-11262.

²² H.Res. 977, extending the deadline to March 31, 1976, agreed to in the House January 26, 1976; and H.Res. 1121, extending the deadline to May 4, 1976, agreed to in the House March 31, 1976.

²³ H.Res. 97, agreed to in the House January 11, 1977, was called up as a privileged resolution. See “Authorizing Establishment of Ad Hoc Select Committee on the Outer Continental Shelf for Consideration of H.R. 1614,” *Congressional Record*, vol. 123, part 1 (January 11, 1977), pp. 894-898.

²⁴ P.L. 95-372; 92 Stat. 629 (1978). The select committee was reauthorized as a study committee in the 96th Congress, with a termination date of June 30, 1980. H.Res. 53, agreed to in the House March 29, 1979. See “Establishing a Select committee on the Outer Continental Shelf,” *Congressional Record*, vol. 125, part 6 (March 29, 1979), pp. 6821-6831.

²⁵ “Appointment of Members of Select Committee on Outer Continental Shelf,” *Congressional Record*, vol. 121, part 9

reflected party strength in the chamber: the majority was granted 11 seats (increased to 13) and the minority was granted 5 seats (increased to 6). As mentioned, the resolution creating the panel stipulated that the Speaker was to appoint members from the Committees on Interior and Insular Affairs, Judiciary, and Merchant Marine and Fisheries. The reauthorization resolution in the 95th Congress specified that the Speaker should also appoint members from other committees “so as to insure the expeditious consideration and reporting of appropriate legislation.”²⁶ A member of the Rules Committee and a member of the Interstate and Foreign Commerce Committee (now Energy and Commerce) were added in the 95th Congress.

Ad Hoc Committee on Energy

National concern over the cost and availability of energy in the mid-1970s, especially of petroleum and petroleum products, probably exceeded national concern today over health care. While more than five-sixths of Americans today have some form of health insurance²⁷—somewhat blunting the impact of health care costs and availability—most, if not nearly all, Americans in the 1970s were able to identify the impact of energy costs and availability on their lives. Newly elected President Jimmy Carter set a 90-day deadline from his inaugural to submit comprehensive energy legislation to the 95th Congress (1977-1979). Congressional Quarterly commented that, while the President learned from his experience with energy legislation to “abandon his early habit of forcing arbitrary deadlines” in complex policy endeavors, his administration met his 90-day goal.²⁸ Congress and the President, however, ended up spending the whole 95th Congress—rather than the goal of only its first session—working for enactment of what Congressional Quarterly characterized as “remnants” of the President’s original proposal.²⁹

On April 18, 1977, President Carter made a nationally broadcast address on energy. On April 20, he made another nationally broadcast address on energy at a joint session of Congress. On April 22, he held a nationally broadcast press conference on energy. Finally, on April 29, he submitted energy legislation to Congress. On April 21, the House, anticipating the energy legislation that the President would send Congress, established an Ad Hoc Committee on Energy.

Creation

The House created the Ad Hoc Committee on Energy by privileged resolution on a voice vote on April 21, 1977, the day after President Carter’s address to a joint session of Congress. The panel was authorized to—

...consider and report to the House on the message of the President dated April 20, 1977 [relating to comprehensive energy legislation]..., on other messages or communications related thereto, and on any bill or resolution which the Speaker may sequentially refer thereto which the Speaker determines relates to the substance of the President’s message: *Provided however*, That this paragraph shall not preclude initial reference to the ad hoc

(April 22, 1975), p. 11271; and “Appointment as Members of Ad Hoc Committee on Outer Continental Shelf,” *Congressional Record*, vol. 121, part 10 (May 6, 1975), p. 13093.

²⁶ Section 1(b) of H.Res. 97, agreed to in the House January 11, 1977.

²⁷ CRS Report RL32237, *Health Insurance: A Primer*, by Bernadette Fernandez.

²⁸ “Carter Energy Bill Fails to Clear,” *Congressional Quarterly Almanac*, 1977, vol. XXXIII (Washington, DC: Congressional Quarterly Inc., 1978), p. 709.

²⁹ “Energy Bill: The End of an Odyssey,” *Congressional Quarterly Almanac*, 1978, vol. XXXIV (Washington, DC: Congressional Quarterly Inc., 1979), p. 639.

committee of a bill or resolution incorporating the recommendations of the committees with subject-matter jurisdiction over the substance of the President's message.³⁰

The resolution authorized an ad hoc committee of 37 members named by the Speaker, one of whom he would designate as chair.³¹ The Speaker could select members from the committees of jurisdiction and from other committees "as the Speaker may determine so as to insure the expeditious consideration and reporting of appropriate legislation."³² The resolution stated that the select committee was allowed to use staff of the standing committees from which the select committee's members were chosen,³³ although additional resources were subsequently authorized. No date was set in the resolution by which the select committee was to report, but the committee terminated "upon the completion of the legislative process, including final disposition of any veto message...."³⁴

Majority Leader Jim Wright first explained the jurisdictional need for the legislation:

The purpose of the ad hoc energy committee would be to draw together an interdisciplinary group from various committees of regular jurisdiction in order to provide one general comprehensive overview. This device should facilitate an opportunity, heretofore lacking, for the House to work its will in achieving a comprehensive energy policy.³⁵

He then explained the procedure that would be employed between the select committee and the committees of jurisdiction:

It is anticipated that, upon receipt from the President of specific legislative recommendations to carry out his energy plan, this ad hoc committee to be appointed by the Speaker might hold hearings and might make recommendations, but that the several components of the recommended legislation would be referred to the standing committees of the House according to their respective jurisdictions under the Rules of the House. Those committees then would be charged by the Speaker with the responsibility of holding hearings, considering the legislation, marking up sections of a bill, and returning those respective sections to the ad hoc committee.

After these deliberations had been completed, it is expected that a rule would be sought under which the entire program might be considered by the House in a manner whereby each separate section of the bill could be managed on the floor by the appropriate spokesman from the committee which drafted that specific section of the bill. It would be further anticipated, however, that the first right of recognition to offer an amendment on the floor to any such section would repose with the ad hoc committee.

³⁰ Section 1(a) of H.Res. 508, agreed to in the House April 21, 1977. H.Res. 508 was called up as privileged resolution.

³¹ Later on April 21, the House agreed to H.Res. 509, increasing the number of members of the select committee to 40 from 37. Majority Leader Jim Wright explained, "...by expanding the number by three we would facilitate the broadening of the base of the committee in order that certain Members from a State that needs rights to be represented on this committee might be represented." Rep. Jim Wright, "Amending House Resolution 508, Increasing Membership on Ad Hoc Committee on Energy," *Congressional Record*, vol. 123, part 10 (April 21, 1977), p. 11608.

³² H.Res. 508, § 1(b).

³³ H.Res. 508, § 3.

³⁴ H.Res. 508, § 4. The first funding resolution (H.Res. 531, agreed to in the House May 26, 1977) authorized expenditures until January 3, 1978. The second and third funding resolutions (H.Res. 1051, agreed to in the House April 4, 1978, and H.Res. 1237, agreed to in the House August 11, 1978) authorized expenditures until January 3, 1979.

³⁵ Rep. Jim Wright, "Ad Hoc Committee on Energy," *Congressional Record*, vol. 123, part 10 (April 21, 1977), p. 11550.

So this is an effort to permit the House to look at the energy problem as one composite problem and to treat it as one problem, but to do so without robbing or emasculating the jurisdiction of the Standing Committees of the House.³⁶

The resolution identified a specific presidential message as the jurisdiction of the select committee, although the Speaker was given some flexibility to determine what other matters might relate to that message and to refer them sequentially to the select committee. The majority leader also explained during debate that legislation to be referred to the select committee would be determined by the parameters of what legislation was submitted by President Carter.³⁷

In debate on the resolution to create the select committee, the third-ranking member of House Interstate and Foreign Commerce Committee (now the Energy and Commerce Committee) and chair of its Energy and Power Subcommittee, Representative John D. Dingell, summarized the procedures by which the select committee would operate, which were allowed by the resolution and which Speaker Thomas P. “Tip” O’Neill Jr. had included in a letter to Members the previous day. Mr. Dingell stated:

...the new committee will quickly organize and possibly hold general hearings on the President’s energy message, but the legislation itself will be parceled out to the standing committees. When these committees complete their work and report the parcels out, they will be sequentially referred to the ad hoc committee. *That committee will not...be authorized to change the bill as reported by the standing committees.* But it can recommend amendments for consideration on the floor. (*Emphasis added.*)

The Speaker’s letter states his intention to recommend that the bill reported by the standing committees be considered as an original bill, with the ad hoc committee amendments, if any, made in order. This procedure should insure that all Members, not just those on the ad hoc committee, will have an opportunity to offer amendments.

Each standing committee will manage on the floor those parts or titles of the bill that fall within their jurisdiction. In conference, representatives of the standing committees, presumably including some not on the ad hoc committee, will have primary responsibility to settle differences relating to their portions of the bill.³⁸

Mr. Dingell also noted that the Speaker intended to use his authority to set a reporting deadline for the standing committees.³⁹ The Speaker’s letter appears in the **Appendix**.

Minority Leader John J. Rhodes supported the creation of the select committee and had previously introduced a resolution to create a select energy committee. He spoke about Republican appointments to the committee:

I intend to appoint Members to the committee from the Republican side who will want legislation, and not those who do not want it. Personally, I intend to do everything that I can to facilitate the work of this committee and the work of the other committees that are involved....⁴⁰

³⁶ Ibid.

³⁷ Ibid., pp. 11553, 11556.

³⁸ Rep. John D. Dingell, “Ad Hoc Committee on Energy,” *Congressional Record*, vol. 123, part 10 (April 21, 1977), p. 11552.

³⁹ Ibid.

⁴⁰ Rep. John J. Rhodes, “Ad Hoc Committee on Energy,” *Congressional Record*, vol. 123, part 10 (April 21, 1977), p. 11550. Mr. Rhodes’s comments also reflected House custom that the minority leader would propose to the Speaker the minority-party Members to be appointed to a select committee.

Congress received President Carter's energy legislation on April 29, introduced as H.R. 6831 by Majority Leader Wright. The Speaker referred it to five committees on May 2—Interstate and Foreign Commerce; Banking, Finance, and Urban Affairs; Government Operations; Public Works and Transportation; and Ways and Means.⁴¹ The Speaker established a reporting deadline of July 13. The Banking Committee was discharged from further consideration that day (it reported a freestanding bill, H.R. 7893); the other four committees reported. On July 20, Ad Hoc Energy Committee Chair Thomas L. "Lud" Ashley introduced a bill incorporating all of the changes recommended by the standing committee (H.R. 8444), which the Speaker referred to the select committee with a reporting deadline of July 27, and the select committee reported the bill.

In the period between receipt of the President's legislation and the standing committees' reporting, the select committee did not take high-profile public action. "Once the regular standing committees began hearings and markup on the Carter legislation, the ad hoc panel retreated into the background," Congressional Quarterly explained.⁴² In the week that the select committee considered H.R. 8444, Congressional Quarterly summarized the proceedings thus:

The committee hurried through the provisions of the bill in three days, July 20-22. During the consideration the committee functioned largely as a Democratic forum; GOP proposals were soundly defeated. Democratic members on the panel, basically working as an arm of the party leadership that named them, established an unshakable majority to protect President Carter's energy program. They operated principally through private caucuses they held the day before each committee meeting to agree among themselves on specific amendments they would allow the next day. The pattern prevailed throughout with the agreed-upon amendments easily approved and others easily rejected—mostly along party lines. The actions produced howls of protest from Republicans who said they were being frozen out of decisions on national energy policy.⁴³

While the House passed H.R. 8444 on August 5, 1977, the Senate split its energy legislation into five bills. The congressional odyssey of the Carter energy proposals ended after 18 months on October 15, 1978, when the House voted to adopt en bloc the conference reports on the five bills, clearing them for the President's signature.⁴⁴

Membership

H.Res. 508 authorized a select committee of 37 members. Reflecting party strength in the chamber, the majority party gained 25 seats and the minority 12 seats. After the House agreed to H.Res. 509 increasing the select committee's size to 40 members, the majority was increased to 27 and the minority to 13. The Speaker was directed to appoint members—

...from those committees of the House which he determines have subject-matter jurisdiction over the substance of the President's message, and from such other committees as the Speaker may determine so as to insure the expeditious consideration and reporting of appropriate legislation.⁴⁵

⁴¹ These committees are now, respectively, Energy and Commerce, Financial Services, Oversight and Government Reform, Transportation and Infrastructure, and Ways and Means.

⁴² "Carter Energy Bill Fails to Clear," *Congressional Quarterly Almanac*, 1977, vol. XXXIII (Washington, DC: Congressional Quarterly Inc., 1978), p. 721.

⁴³ *Ibid.*, p. 722.

⁴⁴ P.L. 95-617; 92 Stat. 3117 (1978); P.L. 95-618; 92 Stat. 3174 (1978); P.L. 95-619; 92 Stat. 3206 (1978); P.L. 95-620; 92 Stat. 3289 (1978); and P.L. 95-621; 92 Stat. 3350 (1978).

⁴⁵ Section 1(b) of H.Res. 508, agreed to in the House April 21, 1977.

Thirty of the select committee's members were drawn from the Committees on Banking, Finance, and Urban Affairs; Interior and Insular Affairs (now Natural Resources); Interstate and Foreign Commerce; and Ways and Means.

Select Committee on Homeland Security (107th Congress)

In the 107th Congress (2001-2003), the Select Committee on Homeland Security had responsibility more akin to the Ad Hoc Committee on Energy but operated more independently from the standing committees than that earlier select committee. The bill (H.R. 5005) to create a Department of Homeland Security was referred to 12 committees, but the select committee developed and reported the legislation called up in the House.

The impetus for President George W. Bush's proposal and congressional action included the 9/11 terrorist attacks on the United States, pressure from Congress on the President to propose a homeland security department, markup of a homeland security department bill (S. 2452) in the Senate Governmental Affairs Committee (now the Homeland Security and Governmental Affairs Committee), and other factors. With the breadth of the President's proposal, House leaders sought a mechanism and process for the orderly, expeditious consideration of homeland security department legislation.

Creation

President Bush on June 6, 2002, proposed the creation of a Department of Homeland Security. In order to facilitate consideration of such wide-ranging legislation at the committee level, the House on June 19 agreed by voice vote to a resolution to establish a Select Committee on Homeland Security.⁴⁶ The select committee was given jurisdiction to—

...develop recommendations and report to the House on such matters that relate to the establishment of a department of homeland security as may be referred to it by the Speaker and on recommendations submitted to it under section 6.⁴⁷

Section 6 established the procedural relationship between the select committee and the standing committees:

(a) Each standing or permanent select committee to which the Speaker refers to [sic] a bill introduced by the Majority Leader or his designee (by request) that proposes to establish a department of homeland security may submit its recommendations on the bill only to the select committee. Such recommendations may be submitted not later than a time designated by the Speaker.

(b) The select committee shall consider the recommendations submitted to it on a bill described in subsection (a) and shall report to the House its recommendations on such bill.

Under the resolution, the Speaker could determine the parameters of the select committee's jurisdiction—and, for that matter, the scope of jurisdiction exercised by the standing committees—in his decision over what bill or bills to refer. A limitation on the Speaker was that the measure(s) relate to the creation of a department of homeland security.

The Speaker was directed to appoint nine Members, "of whom four shall be appointed on the recommendation of the Minority Leader." The Speaker was also directed to designate a

⁴⁶ H.Res. 449, agreed to in the House June 19, 2002, was reported as a original measure by the Rules Committee on June 18.

⁴⁷ H.Res. 449, § 3.

committee member as chair.⁴⁸ The select committee was authorized to use “services of the staff of the House.”⁴⁹ The select committee terminated after final disposition of the bill, including the disposition of any veto message. In addition, the resolution creating the select committee was not to be “construed to alter” any committee’s jurisdiction.⁵⁰

Representative David Dreier, chair of the Rules Committee and majority floor manager of the resolution, explained the need for and purpose of the select committee:

Mr. Speaker, the resolution allows us to move decisively in a bipartisan manner to establish an empowered Department of Homeland Security....

This resolution ensures that we are moving forward with a sense of deliberative urgency, permitting the House to condense the legislative process in a way that will foster a thoughtful and carefully crafted legislative product. In so doing, it establishes a process for considering the President’s initiative similar to one that was used a quarter of a century ago by Speaker Tom [sic] O’Neill in addressing the energy crisis.

The resolution provides a clearinghouse for ideas, an ad hoc body with the expertise to resolve jurisdictional disputes, and the authority to compile a final package. Instead of potentially lengthy struggles on overlapping jurisdictional issues, the select committee will operate as a type of conference committee for all relevant committees of jurisdiction. Every committee is ensured to have a voice in the process.

Mr. Speaker, with very few exceptions, regular order will be applied to the select committee, meaning it will have to comply with all rules of the House. The select committee is limited in its scope, authorized only to consider legislation creating a Homeland Security Department, and will dissolve once that duty has been completed. The membership will be a small group comprised of elected leaders from both sides of the aisle.⁵¹

Majority Leader Dick Armey introduced H.R. 5005, by request, on June 24, 2002, and it was referred to the select committee “for a period to be subsequently determined by the Speaker,”⁵² and in addition to the Committees on Agriculture, Appropriations, Armed Services, Energy and Commerce, Financial Services, Government Reform, Intelligence, International Relations, the Judiciary, Science, Transportation and Infrastructure, and Ways and Means,⁵³ “for a period ending not later than July 12, 2002.”⁵⁴ Additional committees had narrower jurisdictional claims to H.R. 5005, but the bill was not referred to them.⁵⁵ All committees but for the Armed Services and Intelligence Committees ordered H.R. 5005 reported on July 12, and all committees were discharged from further consideration of the bill that day. The select committee reported the bill with an amendment in the nature of a substitute on July 24.

⁴⁸ H.Res. 449, § 2.

⁴⁹ H.Res. 449, § 5.

⁵⁰ H.Res. 449, § 7.

⁵¹ Rep. David Dreier, “Establishing the Select Committee on Homeland Security,” *Congressional Record*, vol. 148, part 8 (June 19, 2002), pp. 10722-10723.

⁵² H.R. 5005, as introduced.

⁵³ The Government Reform Committee is now the Oversight and Government Reform Committee. The International Relations Committee is now the Foreign Affairs Committee. The Science Committee is now the Science and Technology Committee. The Intelligence Committee is the Permanent Select Committee on Intelligence.

⁵⁴ H.R. 5005, as introduced.

⁵⁵ See CRS Report RL31449, *House and Senate Committee Organization and Jurisdiction: Considerations Related to Proposed Department of Homeland Security*, by Judy Schneider.

The select committee held three days of hearings on the measure after it had been reported by the standing committees, including testimony by chairs and ranking minority members on their committees' recommendations. Congressional Quarterly summarized the select committee's one-day markup of July 19 as follows:

Signaling that the administration would get most of what it wanted from the House, the nine-member Select Committee on Homeland Security ignored many of the departures proposed by the various committees and approved a bill...on July 19 that stuck close to the White House plan. After a daylong markup, the committee approved the measure, 5-4, along party lines.⁵⁶

During debate on the resolution creating the select committee, Majority Leader Armev stated that Speaker intended that the Speaker and the Democratic leader would "propose to the Committee on Rules a resolution governing the consideration of the select committee's product and jointly recommend that it be adopted."⁵⁷ The House adopted a structured rule, the bill passed the House on July 26, and congressional action was completed on November 22 when the House agreed to a Senate amendment to H.R. 5005.⁵⁸

Membership

The panel comprised nine members, five majority members and four minority members. The members appointed were each party's leadership, except for the Speaker and Democratic leader. Majority Leader Armev was appointed chair.

Select Committee on Homeland Security (108th Congress)

Congress included the following sense-of-the-Congress provision in the Homeland Security Act:

It is the sense of Congress that each House of Congress should review its committee structure in light of the reorganization of responsibilities within the executive branch by the establishment of the Department.⁵⁹

While this provision did not require either chamber to take any action, the House responded by creating a select committee with legislative jurisdiction over the Homeland Security Act and study jurisdiction over House rules, including committee organization, related to homeland security.

Creation

In adopting its rules for the 108th Congress, the House created a Select Committee on Homeland Security for the duration of the Congress. The House vested the select committee with the following jurisdiction:

(1) **LEGISLATIVE JURISDICTION**—The select committee may develop recommendations and report to the House by bill or otherwise on such matters that relate

⁵⁶ "Homeland Department Created," *CQ Almanac Plus*, 2002, vol. LVIII (Washington, DC: Congressional Quarterly Inc., 2003), p. 7-5.

⁵⁷ Rep. Dick Armev, "Establishing the Select Committee on Homeland Security," *Congressional Record*, vol. 148, part 8 (June 19, 2002), p. 10724.

⁵⁸ P.L. 107-296; 116 Stat. 2135 (2002).

⁵⁹ P.L. 107-296, §1503; 116 Stat. 2135, 2309.

to the Homeland Security Act of 2002 (P.L. 107-296) as may be referred to it by the Speaker.

(2) OVERSIGHT FUNCTION—The select committee shall review and study on a continuing basis laws, programs, and Government activities relating to homeland security.⁶⁰

The Select Committee on Homeland Security was given another function in the House rules resolution—to assist the House in determining how it might organize itself in the future vis-à-vis the issue of homeland security:

(3) RULES STUDY—The select committee is authorized and directed to conduct a thorough and complete study of the operation and implementation of the rules of the House, including rule X, with respect to the issue of homeland security. The select committee shall submit its recommendations regarding any changes in the rules of the House to the Committee on Rules not later than September 30, 2004.⁶¹

The resolution defined the select committee's jurisdiction in terms of a specific public law. While the Speaker was authorized to refer measures or matters related to the Homeland Security Act, he was not authorized to refer other or related matters to it. The jurisdiction of the select committee provided the House with a focus for homeland security legislation and oversight, without immediately changing the jurisdictions of the standing committees that held jurisdiction over aspects of homeland security.⁶² The select committee had a two-year life under the resolution,⁶³ but there were not deadlines included in the resolution on matters referred to the select committee. The select committee was authorized to "use the services of staff of the House,"⁶⁴ although other resources were made available in a funding resolution.⁶⁵ The Speaker was authorized to appoint committee members, "including Members appointed on the recommendation of the Minority Leader," and vacancies were to be filled in the same manner "as the original appointment."⁶⁶ The Speaker was directed to designate a chair.⁶⁷

⁶⁰ H.Res. 5, § 4(b)(1) and (2); H.Res. 5, the rules package for the 108th Congress, was agreed to in the House January 7, 2003.

⁶¹ H.Res. 5, § 4(b)(3). See U.S. Congress, House, Select Committee on Homeland Security, *Recommendations of the Select Committee on Homeland Security on Changes to the Rules of the House of Representatives with Respect to Homeland Security Issues*, 108th Cong., 2nd sess., September 30, 2004. The select committee also issued *Supplementary Materials* and *Summary of Activities of the Select Committee on Homeland Security*. A majority of members of the select committee signed a letter from Chairman Christopher C. Cox and Ranking Member Jim Turner transmitting the recommendations to the Rules Committee. There was not a committee meeting to vote on the recommendations. Copies of these documents are available from this CRS report's author to congressional clients upon request.

⁶² During debate on the rules changes proposed to the House, Representative James L. Oberstar, the ranking member of the House Transportation and Infrastructure Committee, observed: "Mr. Speaker, the proposal to create a new Select Committee on Homeland Security interestingly does not make any changes in the legislative jurisdiction of the committees outlined in rule 10 of the rules of the House." He ended his remarks by asking a question of House Rules Committee Chairman Dreier about referral in the 108th Congress of a bill covering subject matter that, in the 107th Congress, had been reported by the Transportation and Infrastructure Committee. Chairman Dreier responded: "Mr. Speaker, let me just say that it is very clear that the Speaker does have authority to refer legislation, and it is his intent to ensure that we maintain the jurisdiction of those committees." Rep. James L. Oberstar and Rep. David Dreier, remarks in the House, "Rules of the House," *Congressional Record*, daily edition, vol. 149, January 7, 2003, p. H15.

⁶³ H.Res. 5, § 4(a)(1).

⁶⁴ H.Res. 5, § 4(d).

⁶⁵ H.Res. 77, agreed to in the House February 13, 2003; and H.Res. 110, agreed to in the House May 8, 2003.

⁶⁶ H.Res. 5, § 4(a)(2) and (a)(3).

⁶⁷ H.Res. 5, § 4(a)(2).

Speaker J. Dennis Hastert explained the purpose of the select committee in remarks to the House following his reelection as Speaker:

Later on today, we will vote to create a Select Committee on Homeland Security. Members of this select committee will oversee the creation of the Department of Homeland Security to make certain that the executive branch is carrying out the will of the Congress. This select committee will be our eyes and our ears as this critical department is organized. The standing committees of the House will maintain their jurisdictions and will still have authorization and oversight responsibilities. This House needs to adapt to the largest reorganization of our executive branch in 50 years, and this select committee will help us make this transition.⁶⁸

In the 108th Congress, measures related to *homeland security* were referred to the Select Committee on Homeland Security and in addition to other committees, with the select committee designated by the Speaker as the primary committee. Other measures related to homeland security were referred in addition to the select committee and other committees, with a committee other than the select committee designated by the Speaker as the primary committee. Some measures related to homeland security were not referred to the select committee.⁶⁹ The select committee considered all seven measures referred to it.

Membership

The panel comprised 50 Members, 27 Republicans and 23 Democrats, a ratio reflecting standing committees' ratios. Members served on many other House committees. The chair was also a member of the Energy and Commerce Committee, and the ranking member was also a member of the Armed Services Committee.

Analysis of Components of Ad Hoc Select Committees

This part of the report analyzes several aspects of the select committees, seeking to explain similarities and differences and examine the considerations and consequences of the choices made by the House. The aspects analyzed are the purpose of granting legislative authority, jurisdiction and referral, the relationship between the select committees and the standing committees of jurisdiction, reporting deadlines, membership and chairmanship, resources made available to the select committees, floor and post-passage consideration of the legislation reported by the select committees, and the select committees' life-spans.

To guide the reader through this part of the report, **Table 1** summarizes some of the key factual aspects about the select committees created since 1974.

⁶⁸ Speaker J. Dennis Hastert, remarks in the House, "Election of Speaker," *Congressional Record*, daily edition, vol. 149, January 7, 2003, p. H5.

⁶⁹ See, for example, *Homeland Security: Bill Referrals in the House, 108th Congress*, by Judy Schneider, CRS congressional distribution memorandum, April 9, 2003.

Table 1. Summary of the Attributes of the Select Committees

	Outer Continental Shelf (94th Congress)	Outer Continental Shelf (95th Congress)	Energy (95th Congress)	Homeland Security (107th Congress)	Homeland Security (108th Congress)
Created by freestanding resolution?	Yes	Yes	Yes	Yes	No
Jurisdiction determined by?	Bill designated in resolution	Bill designated in resolution	Presidential message	Subject matter	Subject matter
Speaker referred more than one matter to select committee?	No	No	Yes	Yes	Yes
Time limit to report set by resolution or Speaker?	Resolution	Resolution	Speaker	Speaker	Speaker
Life of select committee set in resolution?	End of legislative process	End of legislative process	End of legislative process	End of legislative process	108 th Congress
Separate funding resolution(s)?	Yes	Yes	Yes	No	Yes
Members solely from committees of jurisdiction?	Yes	No	No	No	No
Membership increased after select committee's creation?	Yes, by unanimous consent	No	Yes, by resolution	No	No
Resolution provided for minority leader advice on minority assignments?	No	No	No	Yes	Yes
Select committee chair had chaired a standing committee?	No	No	No	No	No
More than one funding resolution	Yes	Yes	Yes	n/a	No
Shared jurisdiction with standing committees?	No	No	Yes	Yes	Yes
Standing committees reported to House?	No	No	Yes	No	Yes

	Outer Continental Shelf (94 th Congress)	Outer Continental Shelf (95 th Congress)	Energy (95 th Congress)	Homeland Security (107 th Congress)	Homeland Security (108 th Congress)
Standing committees' recommendations considered by select committee?	No	No	Yes	Yes	n/a
Select committee reported to House?	Yes	Yes	Yes	Yes	Yes
Base text for House consideration reported by?	Select committee	Select committee	Standing committees	Select committee	n/a
Type of rule?	Open	Open	Structured	Structured	Structured; unanimous consent agreement
Conferees solely from select committee?	Yes	No	Yes	n/a	No

Source: Author's summary presentation of facts about the select committees.

Legislative Committee or Study Committee?

While this report focuses on the creation of ad hoc select committees with legislative authority, it is worthwhile to briefly examine the justification given for this decision in the case of the four select committees. As noted earlier, the proponents of H.Res. 988 in the 93rd Congress wanted to require multiple referrals, where appropriate, but recognized that there could be instances in which the House might wish to centralize committee decision making in one committee. The House could already by resolution give any standing committee that authority on a temporary or permanent basis, or create a new standing or select committee. However, the proponents of H.Res. 988, supported by the House, specifically provided the mechanism of ad hoc select committees, to be created by resolution.⁷⁰

The Outer Continental Shelf select committee (94th-95th Congresses) was created to produce one piece of legislation, instead of several committees potentially reporting competing measures or competing versions of a measure. Representative Murphy said, "The establishment of this select committee will prevent major jurisdictional problems which would occur because of vast overlapping jurisdictions in these areas." Mr. Murphy inserted in the *Congressional Record* a Congressional Research Service analysis of referrals of outer continental shelf legislation in support of this argument.⁷¹ The House in this instance seemed to feel especially unable to act

⁷⁰ *Committee Reform Amendments of 1974*, H.Rept. 93-916, pt. 2, pp. 4, 58-59.

⁷¹ Rep. John M. Murphy, "To Establish an Ad Hoc Select Committee on Outer Continental Shelf," *Congressional Record*, vol. 121, part 9 (April 22, 1975), pp. 11261-11262.

expeditiously through its standing committees when the Senate had already passed a bill in the 93rd Congress and was expected to pass a related bill early in the 94th Congress.⁷²

Majority Leader Wright expressed similar sentiments in support of creation of the Energy select committee (95th Congress): “This device should facilitate an opportunity, heretofore lacking, for the House to work its will in achieving a comprehensive energy policy.”⁷³ In the previous Congress, Speaker O’Neill stated that jurisdiction over energy policy was split among too many committees and that he would work for a standing energy committee in order to develop comprehensive energy policy. The Speaker was unable to achieve that objective, but he was able to negotiate the creation of the ad hoc committee to facilitate House consideration of President Carter’s energy proposals.⁷⁴

In advocating creation of the Homeland Security select committee (107th Congress), Rules Committee Chairman David Dreier first made an analogy to the 95th Congress’s Energy select committee: “... it establishes a process for considering the President’s initiative similar to one that was used a quarter of a century ago...in addressing the energy crisis.” He argued the objective of efficiency:

This resolution ensures that we are moving forward with a sense of deliberative urgency, permitting the House to condense the legislative process.... Instead of potentially lengthy struggles on overlapping jurisdictional issues, the select committee will operate as a type of conference committee for all relevant committees of jurisdiction. Every committee is ensured to have a voice.⁷⁵

In these two latter instances, the House seemed to choose an ad hoc select committee when jurisdiction was spread too widely and too equally among committees. Concomitantly, the House seemed to perceive an ad hoc select committee in these instances to be an antidote to likely delay and inefficiency if the committees of jurisdiction were each allowed to exercise their full jurisdictional and procedural authority: the end result, when reached, would be competing measures or versions of measures in which each committee had a deeply vested interest. The House also seemed to want a policy committee to play the key mediating role among House committees and Representatives, rather than leaving that role directly or solely to the Rules Committee, the majority leadership, or another set of actors. The existence of “iron triangles,” or at least communities of interest, between specific committees or subcommittees, executive agencies or units, and interest groups might also have been a factor: an ad hoc select committee might have a better chance of overcoming customary understandings, ways of doing business, and relationships in order to develop legislation matched to a strategic policy goal.

The Select Committee on Homeland Security (108th Congress) served a different purpose. The predecessor select committee in the 107th Congress was obsolete, the Department of Homeland

⁷² U.S. Congress, House, Ad Hoc Select Committee on the Outer Continental Shelf, *Outer Continental Shelf Lands Act Amendments of 1976*, 94th Cong., 2nd sess., H.Rept. 94-1084 (Washington, DC: GPO, 1976), pp. 70-71.

⁷³ Rep. Jim Wright, “Ad Hoc Committee on Energy,” *Congressional Record*, vol. 123, part 10 (April 21, 1977), p. 11550.

⁷⁴ “Carter Energy Bill Fails to Clear,” *Congressional Quarterly Almanac*, 1977, vol. XXXIII (Washington, DC: Congressional Quarterly Inc., 1978), p. 721. The House continued to debate its committee organization related to energy issues in the 96th Congress (1979-1981), first establishing a select committee to study committee organization, among other matters (H.Res. 118, agreed to in the House March 20, 1979), and ultimately voting to designate the Commerce Committee as the lead House committee on energy and to change its name to the Energy and Commerce Committee (1981-1983) (H.Res. 549, agreed to in the House March 25, 1980).

⁷⁵ Rep. David Dreier, “Establishing the Select Committee on Homeland Security,” *Congressional Record*, vol. 148, part 8 (June 19, 2002), pp. 10722-10723.

Security having been created in law six weeks earlier. The House, however, recognized a need for oversight of the new department, for consideration of legislation from the policy perspective of homeland security, and for reform of its committee system to correlate with the reorganization of the executive branch. On the other hand, the House was not ready to move forward with changes to its committee system immediately at the beginning of the 109th Congress. This select committee was a transitional entity, as explained by Speaker Hastert:

This select committee will be our eyes and our ears as this critical department is organized. The standing committees of the House will maintain their jurisdictions and will still have authorization and oversight responsibilities. This House needs to adapt to the largest reorganization of our executive branch in 50 years, and this select committee will help us make this transition.⁷⁶

In common with the other select committees, this select committee served a specific purpose for the House, temporarily and at a specific time.⁷⁷

Jurisdiction and Referral

While House committees' jurisdiction generally exists in descriptive but sometimes indistinct subject terms listed in Rule X, the jurisdiction of ad hoc select committees is normally carefully circumscribed. In establishing the jurisdiction of the four ad hoc select committees, the House used a specific bill number in one instance, a specific presidential message in the second instance, a specific subject in the third instance, and a specific public law in the fourth instance.

Jurisdiction

Use of a specific bill number to set jurisdiction, as was done in creating the Outer Continental Shelf select committee (94th-95th Congresses), would seem to give the majority, and especially the majority leadership and select committee chair, the greatest control over a select committee's work. It would also confine a select committee legislatively, making the legislative outcome relatively predictable while protecting the jurisdiction of the standing committees. A bill could be drafted to include and exclude what the majority wishes, allowing the select committee to act on certain subjects but not on others. The bill could also presumably be drafted to reflect the majority's desired legislative outcome and, hence, policy outcome. A bill could alternately be drafted as a bipartisan bill, giving both the majority and minority a stake in its consideration by a select committee. Drafting in either case could anticipate Senate action and presidential positions.⁷⁸

⁷⁶ Speaker J. Dennis Hastert, remarks in the House, "Election of Speaker," *Congressional Record*, daily edition, vol. 149, January 7, 2003, p. H5.

⁷⁷ A recent example of discussions of whether or not give legislative authority to a select committee occurred at the beginning of the 110th Congress. Speaker Nancy Pelosi and other Members wished to create the Select Committee on Energy Independence and Global Warming, possibly with legislative authority. For background on these discussions, see Susan Ferrechio and Manu Raju, "Pelosi Clarifies Plans for Climate-Change Panel; Dingell Remains Skeptical," *CQ Today*, January 19, 2007, p. 4; Jonathan Allen, "Pelosi, Eager to Move on Global Warming, Finds Way to Work Around Dingell," *CQ Today*, January 25, 2007, pp. 3, 24; and Letter to Speaker Nancy Pelosi from House Energy and Commerce Committee Chairman John D. Dingell and Oversight and Government Reform Committee Chairman Henry A. Waxman, February 5, 2007, available online at [http://www.sourcewatch.org/index.php?title=Image:Dingell_global_warming_letter.png].

⁷⁸ In the 94th Congress (1975-1977), H.R. 6218 was named in the resolution establishing the Outer Continental Shelf select committee. When the select committee was re-established in the 95th Congress (1977-1979), H.R. 1614 was named in the resolution. H.R. 1614 contained the text of the conference report on S. 521, the companion to H.R. 6218 in the 94th Congress.

Jurisdiction established by reference to a presidential message, as was done in creating the Energy select committee (95th Congress), would seem to cede discretion to the President to determine what a House select committee could consider. The message would determine what is included and excluded from the select committee's jurisdiction and development of legislation. The message could be broader or narrower than the House might wish. Coordination between the President and Congress, or at least between the President and his party in Congress when the President's party controls Congress, could result in a presidential message of an appropriate scope, even if there were policy differences between the President's recommendations and what a majority of Members of Congress might support. Alternately, the House could await the delivery of the presidential message before establishing an ad hoc select committee and defining its jurisdiction.

Using subject matter to define jurisdiction, as was done in creating the Homeland Security select committee (107th Congress), especially with referral discretion in the hands of the Speaker, gives flexibility to the Speaker and the majority leadership to determine what measure, measures, presidential messages, or other matters to refer to a select committee. So long as the subject matter was described generally enough, the Speaker could determine the specific matters to refer, which would then establish the select committee's purview for developing legislation.

In the case of the select committees on Energy and Homeland Security (107th Congress), the resolutions creating the committees also provided for the consideration of recommendations made by the standing committees of jurisdiction. These recommendations could be broad or narrow or conflicting and affect the select committee's purview in developing legislation. The recommendations made on energy and on a homeland security department by the standing committees, however, did not seem to circumscribe the select committees' anticipated work. (The relationship between the standing and select committees is discussed below.)

The Select Committee on Homeland Security (108th Congress), it could be argued, had the broadest jurisdiction of any of the select committees since all legislation related to the Homeland Security Act, a wide-ranging reorganization of the executive branch, could be referred to the select committee. It could report any homeland security legislation referred to it, and could report throughout the two-year Congress. Jurisdictionally, the select committee was to be treated in the same manner under House rules as the standing committees. The Speaker's referral authority, however, seemed somewhat more discretionary than his referral authority under Rule XII. The resolution establishing the select committee used the phrase, "as may be referred to it by the Speaker."⁷⁹ The language of Rule XII, cl. 2(a) states: "The Speaker *shall* refer each bill, resolution, or other matter that relates to a subject listed under a standing committee named in clause 1 of Rule X...." (Emphasis added.) The language of the resolution creating the select committee seemed to maximize the Speaker's discretion within the jurisdictional statement of the committee.

Speaker's Referral Authority

The resolutions establishing these four select committees also allowed the Speaker to refer legislation, within certain parameters, to the select committees other than the one matter understood to be the purpose of the select committee's jurisdiction. The discretion of the Speaker was worded differently in each case. The resolution creating the Outer Continental Shelf select committee provided this discretion with reference to three committees—Interior and Insular Affairs (now Natural Resources), Judiciary, and Merchant Marine and Fisheries (the relevant

⁷⁹ Section 4(b)(1) of H.Res. 5, agreed to in the House January 7, 2003.

portions of jurisdiction now largely belonging to Natural Resources and Transportation and Infrastructure):

...on any related matter on this subject within the jurisdiction of the three committees named in part (b) of this section which may hereafter be referred to it by the Speaker.⁸⁰

The resolution establishing the Energy select committee did not express the Speaker's discretion solely in relationship to the standing committees' jurisdiction. The Speaker could make sequential referrals of certain measures, and initial referral of measures containing recommendations of committees with subject-matter jurisdiction over the substance of the President's message:

...any bill or resolution which the Speaker may sequentially refer thereto which the Speaker determines relates to the substance of the President's message: *Provided however*, That this paragraph shall not preclude initial reference to the ad hoc committee of a bill or resolution incorporating the recommendations of the committees with the subject-matter jurisdiction over the substance of the President's message.⁸¹

The resolution creating the Homeland Security select committee (107th Congress) stated the committee's jurisdiction partly in relation to the Speaker's discretion to refer legislation to establish a homeland security department. The recommendations of other committees made under section 6 of the establishing resolution were not made subject to the Speaker's referral discretion; rather, Section 6 provided that the standing committee report to the select committee:

...develop recommendations and report to the House on such matters that relate to the establishment of a department of homeland security as may be referred to it by the Speaker and on recommendations submitted to it under section 6.⁸²

The resolution establishing the Select Committee on Homeland Security (108th Congress) combined the committee's jurisdiction solely with the Speaker's discretion:

The select committee may develop recommendations and report to the House by bill or otherwise on such matters that relate to the Homeland Security Act of 2002 (P.L. 107-296) as may be referred to it by the Speaker.⁸³

Unlike the directive language on referral in Rule X, this statement, as already noted, provided wide discretion to the Speaker to decide which, if any, matters to refer to the select committee.

More or less discretion could be given to the Speaker in a resolution creating a select committee or in an agreement intended to implement the resolution, such as Speaker O'Neill's letter related to the Energy select committee (95th Congress). (See **Appendix**.) The standing committees of jurisdiction and the House membership generally would seem to be beneficiaries of less flexibility, if the House desired tighter control over a select committee's jurisdiction. The majority leadership or an issue's proponents might prefer more discretion in referral to be given the Speaker.

Based on experience, however, some discretion may be needed. When the Banking, Finance, and Urban Affairs Committee reported a freestanding bill instead of its part of H.R. 6831, the Speaker was able to refer the Banking-reported measure to the Energy select committee. When the department of homeland security bill that the House had passed seemed to be tied up procedurally

⁸⁰ Section 1(a) of H.Res. 412, agreed to in the House April 22, 1975. In the 95th Congress (1977-1979), this jurisdiction was worded slightly differently: "...on any related bill or matter on this subject which the Speaker determines falls within the jurisdiction of the select committee as formulated in subsection (b) of this section." Section 1(a) of H.Res. 97, agreed to in the House January 11, 1977.

⁸¹ Section 1(a) of H.Res. 508, agreed to in the House April 21, 1977.

⁸² Section 3 of H.Res. 449, agreed to in the House June 19, 2002.

⁸³ Section 4(b)(1) of H.Res. 5, agreed to in the House January 7, 2003.

in the Senate, the House wanted to act on another departmental bill to provide another legislative vehicle for congressional action, and the Speaker referred that second bill to the Homeland Security select committee.

Referrals Made by Speakers

Speakers used sparingly the referral authority granted them in the resolution creating the four select committees. A Speaker's exercise of the discretion vested in him to refer additional legislation could have triggered resistance by the standing committees. Three of the select committees had a specific purpose, conceived of as producing one piece of legislation despite the discretion given the Speaker. The Select Committee on Homeland Security (108th Congress) had broader jurisdiction, but the Speaker referred only seven measures to it.⁸⁴

Outer Continental Shelf (94th-95th Congresses)

In the case of the Outer Continental Shelf select committee, only H.R. 6218, the measure named in the resolution creating the select committee, was referred to the select committee in the 94th Congress (1975-1977). The Speaker had been authorized to refer "any related matter on this subject within the jurisdiction of the three committees named in part (b) of this section which may hereafter be referred to it by the Speaker."⁸⁵ The same provision was included in the resolution re-establishing the select committee in the 95th Congress (1977-1979), naming H.R. 1614.⁸⁶ Only H.R. 1614 was referred to the select committee.⁸⁷

Energy (95th Congress)

Under the Energy select committee resolution and the supplemental procedures worked out for the consideration of energy legislation in the 95th Congress (1977-1979), Majority Leader Wright introduced President Carter's energy plan as H.R. 6831 on May 2, 1977. Speaker O'Neill made a split referral of the measure to the Committees on Interstate and Foreign Commerce, Government Operations, Public Works and Transportation, Ways and Means, and Banking, Finance, and Urban Affairs,⁸⁸ subject to a time limit of July 13, 1977. Once four of these committees reported their parts of the measure, amended, and one was discharged from further consideration, the Speaker referred the measure sequentially to the Energy select committee. One other measure, H.R. 7893, the National Weatherization Act, was reported as a freestanding bill July 11, 1977, from the Banking, Finance, and Urban Affairs Committee, and referred sequentially to the Energy select

⁸⁴ After the standing Committee on Homeland Security was established in the 109th Congress, the Speaker in his announced policies clarified the relationship of the standing committee vis-à-vis the select committee on the matter of jurisdiction and referral: "The 109th Congress established the Committee on Homeland Security. The Chair would announce that the Speaker's referrals of measures to the Select Committee on Homeland Security of the 108th Congress will not constitute precedent for referrals to the new committee." "Announcement by the Speaker Pro Tempore," *Congressional Record*, daily edition, vol. 151, January 4, 2005, p. H35.

⁸⁵ Section 1(a) of H.Res. 412, agreed to in the House April 22, 1975.

⁸⁶ Section 1(a) of H.Res. 97, agreed to in the House January 11, 1977.

⁸⁷ The Legislative Information System does not show any referrals to the select committee, but it indicates that two measures were reported from it. However, the reports were filed by the House Merchant Marine and Fisheries Committee.

⁸⁸ Now the Committees on Energy and Commerce, Oversight and Government Reform, Transportation and Infrastructure, Ways and Means, and Financial Services.

committee. No further action was taken on H.R. 7893, but weatherization provisions were included in H.R. 8444.

The chair of the select committee, Representative Ashley, introduced the reported measures as amended as a new bill, H.R. 8444, on July 20, which the Speaker referred to the select committee subject to a time limit of July 27, 1977.

Homeland Security (107th Congress)

In the 107th Congress (2001-2003), pursuant to the resolution creating the Homeland Security select committee, Majority Leader Arney and other Republican Members introduced President Bush's proposed homeland security department bill, by request, as H.R. 5005 on June 24, 2002. It was referred to the Committees on Agriculture, Appropriations, Armed Services, Energy and Commerce, Financial Services, Government Reform, Intelligence, International Relations, the Judiciary, Science, Transportation and Infrastructure, and Ways and Means,⁸⁹ for a period ending not later than July 12, 2002, "for consideration of such matters as fall within the jurisdiction" of the individual committees, and to the Select Committee on Homeland Security, with a time limitation to be set subsequently. Once the standing committees completed their work, by reporting amendments or otherwise, they were discharged July 12, 2002, from further consideration of H.R. 5005. The House by unanimous consent agreed July 23 to a time limit of July 24 on the select committee to report, the select committee having completed its markup July 19. The House passed H.R. 5005 on July 26.

As Senate consideration of H.R. 5005 continued in the lameduck session, the House passed H.R. 5710 (H.R. 5005, with modifications)⁹⁰ in an attempt to expedite Senate action. While H.R. 5710 was referred November 13, 2002, to the Select Committee on Homeland Security, that same day the Rules Committee reported and the House agreed to H.Res. 600, making in order consideration of H.R. 5710. The House passed H.R. 5710 later on November 13.

Homeland Security (108th Congress)

In the 108th Congress (2003-2005), seven measures were referred to the new Select Committee on Homeland Security. One bill, H.R. 1416, the Homeland Security Technical Corrections Act of 2003, and one resolution, H.Res. 286, a resolution of inquiry, were referred exclusively to the select committee. The select committee was designated as the primary committee on one bill, H.R. 3266, the Faster and Smarter Funding for First Responders Act of 2004; the measure was referred in addition to three standing committees. Four bills were referred in addition to the select committee, a standing committee in each instance having been designated as the primary committee:

- H.R. 10, the 9/11 Recommendations Implementation Act, where the Intelligence Committee was designated as the primary committee, and the measure was referred in addition to 12 committees, including the select committee;
- H.R. 2122, the Project Bioshield Act of 2003, where the Energy and Commerce Committee was designated as the primary committee, and the measure was referred in addition to three committees, including the select committee; and

⁸⁹ The Government Reform Committee is now the Oversight and Government Reform Committee; the International Relations Committee, the Foreign Affairs Committee; and the Science Committee, the Science and Technology Committee.

⁹⁰ Rep. Dick Arney, "Homeland Security Act of 2002," *Congressional Record*, vol. 148, part 16 (November 13, 2002), pp. 22113-22114.

- H.R. 2886 and H.R. 4259, both titled the Department of Homeland Security Financial Accountability Act and introduced by the same Member, where the Government Reform Committee was designated as the primary committee, and the measure was referred in addition to the select committee.

The select committee reported five of the bills referred to it. A sixth bill, H.R. 4259, related to a bill already reported by the select committee, was not reported by the select committee, but was reported by the primary committee and considered by the House. The select committee also considered but did not report H.R. 10.

Relationship to Other Committees

House Rule XII, cl. 2(c)(4), allowing the Speaker to refer matters to an ad hoc select committee established by the House, does not describe the relationship between a select committee and the standing committees of jurisdiction. In the four instances of select committees that were given legislative authority, the resolution creating one select committee made no reference to the legislative relationship with the standing committees. The resolutions creating two of the select committees referred to the standing committees, making clear that the standing committees would act before the select committee and that the select committee would report a measure to the House. For one of these two select committees, the relationship was spelled out in a letter to Members from the Speaker and discussed in House debate on the resolution creating the select committee. For the other of these two committees, the relationship was spelled out in the resolution itself.⁹¹ The fourth and most recent select committee was largely subject to the same rules on referral and reporting as House standing committees.

Select Committee Independence

While the membership of the Outer Continental Shelf select committee overlapped with membership of the standing committees of jurisdiction, the resolution creating the select committee was silent on the legislative relationship between the select committee and the standing committees. The select committee appeared to have worked independently of the standing committees and to have supplanted their role in the legislative process on one specified piece of legislation.⁹²

It is possible that the select committee's independence was a function of its jurisdiction over a specific bill, the specificity of the outer continental shelf issue, the overlap in membership between the select committee and relevant standing committees, and other factors. When the issue has been broader—such as energy or homeland security—the House has provided a role for the standing committees. As already noted, Speaker O'Neill believed that jurisdiction over energy policy was split among too many committees. While he was unsuccessful in his effort to create a standing energy committee, he was ultimately successful in negotiating creation of an ad hoc committee in the 95th Congress to facilitate House consideration of the Carter energy proposals.⁹³

With regard to the homeland security department legislation in the 107th Congress, committee chairs, ranking members, and many Members anticipated a potential committee reorganization once the department legislation became law, which Members of both parties considered a

⁹¹ Section 6 of H.Res. 449, agreed to in the House June 19, 2002.

⁹² "Continental Shelf Leasing Bill Postponed," *Congressional Quarterly Almanac*, 1977, vol. XXXIII (Washington, DC: Congressional Quarterly Inc., 1978), pp. 662-667.

⁹³ "Carter Energy Bill Fails to Clear," *Congressional Quarterly Almanac*, 1977, vol. XXXIII (Washington, DC: Congressional Quarterly Inc., 1978), p. 721.

foregone conclusion. Committees and individual Members were unwilling to allow the Government Reform Committee (now Oversight and Government Reform) to solely exercise its jurisdiction over executive branch reorganization. They wanted to bring their expertise to bear on the treatment of agencies and programs within their jurisdiction that would be reorganized into the proposed department. They were particularly concerned over the missions and work of agencies with so-called dual purposes, such as the Coast Guard's search and rescue and other responsibilities in addition to its homeland security duties, and over reflecting in the departmental legislation other considerations than homeland security, such as observing civil liberties or facilitating commerce and transportation.

Speaker Hastert negotiated with Minority Leader Richard A. Gephardt, committee chairs, and others to come up with the role of the select committee and a process for the participation of the committees of jurisdiction, in essence providing a safety valve to allow individual committee and Member perspectives to be aired and turned into recommendations.⁹⁴ The resolution creating the select committee, in addition, provided that, when the select committee dissolved, the resolution would not be "construed to alter the jurisdiction of any standing committee."⁹⁵

Select Committees and Recommendations of Standing Committees

In contrast to the independence of the Outer Continental Shelf select committee, the Energy select committee (95th Congress) and the Homeland Security select committee (107th Congress) were more circumscribed in their ambit as they took on far-reaching issues and legislation. The energy and homeland security subject matters were spread broadly throughout House committees and without a clearly identifiable lead committee. Committees were unwilling to give up legislative participation in the immediate legislation, fearing loss of jurisdiction in the future. In addition, expertise of Members and staff was spread broadly through House committees, and policy outcomes would be unpredictable and potentially politically unpalatable if made by a select committee without the input of the committees of jurisdiction. The House, therefore, twice opted for a two-step process of recommendations by the standing committees made to a select committee, which would report a measure for House consideration.

The resolution in the 95th Congress creating the Energy select committee provided for "initial reference to the ad hoc committee of a bill or resolution incorporating the recommendations of the committees with subject-matter jurisdiction over the substance of the President's message."⁹⁶ This provision was backed up by a letter to all Members from the Speaker detailing the process to be used and the select committee's authority over the standing committees' recommendations. (See **Appendix**.) In addition, the process in the letter was discussed substantively during House debate on the resolution creating the select committee.⁹⁷

As noted above, Majority Leader Wright summarized the procedure that would be employed between the select committee and the committees of jurisdiction:

It is anticipated that, upon receipt from the President of specific legislative recommendations to carry out his energy plan, this ad hoc committee to be appointed by the Speaker might hold hearings and might make recommendations, but that the several

⁹⁴ David Nather and Karen Foerstel, "Committee Chairmen Express Concerns about Major Shift in Jurisdiction," *CQ Weekly*, vol. 60, no. 24, June 15, 2002, pp. 1583-1585; and Adriel Bettelheim, "Security Plan Gets Solid Backing but No Rubber Stamps on Hill," *CQ Weekly*, vol. 60, no. 24, June 15, 2002, pp. 1577-1580.

⁹⁵ Section 7(b) of H.Res. 449, agreed to in the House June 19, 2002.

⁹⁶ Section 1(a) of H.Res. 508, agreed to in the House April 21, 1977.

⁹⁷ "Ad Hoc Committee on Energy," *Congressional Record*, vol. 123, part 10 (April 21, 1977), pp. 11550-11556.

components of the recommended legislation would be referred to the standing committees of the House according to their respective jurisdictions under the Rules of the House. Those committees then would be charged by the Speaker with the responsibility of holding hearings, considering the legislation, marking up sections of a bill, and returning those respective sections to the ad hoc committee.⁹⁸

Later in the debate, Energy and Power Subcommittee Chair Dingell further summarized the procedures by which the select committee would operate, which were allowed by the resolution and which Speaker O'Neill had included in his letter. Mr. Dingell stated:

...the new committee will quickly organize and possibly hold general hearings on the President's energy message, but the legislation itself will be parceled out to the standing committees. When these committees complete their work and report the parcels out, they will be sequentially referred to the ad hoc committee. *That committee will not...be authorized to change the bill as reported by the standing committees.* But it can recommend amendments for consideration on the floor. (*Emphasis added.*)

Mr. Dingell indicated that the Speaker intended to use his authority to set a reporting deadline for the standing committees.⁹⁹

This approach seemed to allow the majority leadership great flexibility to shape a process for the development of legislation. The bare-bones provisions of the resolution creating the ad hoc select committee did not limit the leadership's ability to fashion committee roles and relationships, while still establishing the select committee as the forum for developing the final draft of the legislative vehicle. With their recommendations made the legislative text, the standing committees were guaranteed a very influential role.

In the 107th Congress, the House created an ad hoc select committee to consider legislation to establish a homeland security department. The resolution creating the select committee, as noted, contained specific provisions on the relationship between the select committee and the standing committees of jurisdiction:

(a) Each standing or permanent select committee to which the Speaker refers to [sic] a bill introduced by the Majority Leader or his designee (by request) that proposes to establish a department of homeland security may submit its recommendations on the bill only to the select committee. Such recommendations may be submitted not later than a time designated by the Speaker.

(b) The select committee shall consider the recommendations submitted to it on a bill described in subsection (a) and shall report to the House its recommendations on such bill.¹⁰⁰

This section of the resolution creating the ad hoc select committee succinctly established the roles and relationship of the standing committees and select committee. Like the extensive agreement over energy legislation in the 95th Congress, this section of the Homeland Security select committee resolution also seemed to allow the majority leadership great flexibility to fashion a process for the development of legislation, yet still establishing the select committee as the forum for developing the final draft of the legislative vehicle. In agreeing to have only majority- and minority-party leaders serve on the select committee, the majority-party leadership also could

⁹⁸ Rep. Jim Wright, "Ad Hoc Committee on Energy," *Congressional Record*, vol. 123, part 10 (April 21, 1977), p. 11550.

⁹⁹ Rep. John D. Dingell, "Ad Hoc Committee on Energy," *Congressional Record*, vol. 123, part 10 (April 21, 1977), p. 11552.

¹⁰⁰ Section 6 of H.Res. 449, agreed to in the House June 19, 2002.

exert control over the policy outcomes to be incorporated in the legislation. The standing committees were guaranteed a vocal role in developing the departmental legislation, but not necessarily as influential a role as the standing committees played on energy legislation in the 95th Congress.

In the instance of both of these select committees, the majority made use of its status to ensure the measure reported from the select committee adhered to the majority's position.¹⁰¹

Treatment as Equivalent to a Standing Committee

As explained earlier, the Select Committee on Homeland Security (108th Congress) served a different purpose. The Department of Homeland Security having been created in law, the House recognized a need for oversight of the new department, consideration of legislation from the policy perspective of homeland security, and a need for reform of its committee system to correlate with the reorganization of the executive branch. It was not, however, ready to move forward with changes to its committee system immediately at the beginning of the 108th Congress. The House inserted no unique authority or limitation pertaining to the select committee in the resolution creating the committee: referral and other House rules pertained largely to the select committee as they did to standing committees. This select committee was a transitional entity.¹⁰²

Deadline for Reporting Legislation

At the time the House created the Outer Continental Shelf select committee, House rules specifically authorized the Speaker to impose time limits for committee consideration only on committees to which a measure had been referred sequentially. As noted above, a 1977 rules change allowed the Speaker to also impose a time limit for consideration on the first committee or committees to which a measure was referred. While Rule XII, cl. 2 and its predecessor rule allow the Speaker to "make such other provision as may be considered appropriate" in referral decisions, clause 2(c)(5) stated the Speaker's authority to impose time limitations for committee consideration more generally beginning only in the 106th Congress: "[the Speaker] may subject a referral to appropriate time limitations...."

A deadline for a House ad hoc select committee has not guaranteed a prompt congressional conclusion to the consideration of the reported legislation. It required two Congresses to complete action on outer continental shelf legislation. Energy legislation consumed nearly two years of a Congress. The department of homeland security legislation was reported from the select committee and passed quickly in the House, but Congress did not complete its work until the lameduck session.

Outer Continental Shelf (94th-95th Congresses)

When the House created the Outer Continental Shelf select committee in the 94th Congress (1975-1977), it opted to set a reporting deadline in the select committee resolution—January 31, 1976—

¹⁰¹ See "Carter Energy Bill Fails to Clear," *Congressional Quarterly Almanac*, 1977, vol. XXXIII (Washington, DC: Congressional Quarterly Inc., 1978), p. 722; and "Homeland Department Created," *CQ Almanac Plus*, 2002, vol. LVIII (Washington, DC: Congressional Quarterly Inc., 2003), p. 7-5.

¹⁰² Speaker J. Dennis Hastert, remarks in the House, "Election of Speaker," *Congressional Record*, daily edition, vol. 149, January 7, 2003, p. H5.

giving the select committee a little over nine months to complete its work.¹⁰³ The select committee was unable to report by that date, and the deadline was extended two times in the 94th Congress.¹⁰⁴ The select committee reported on May 4, 1976.

The select committee was reauthorized in 95th Congress (1977-1979).¹⁰⁵ A reporting deadline of the end of the first session of the 95th Congress was designated. The select committee was successful in the 95th Congress in reporting a measure by the deadline.

Energy (95th Congress)

The change in House rules in the 95th Congress (1977-1979) was reflected in the resolution creating the Energy select committee by the resolution's silence on the matter. Rather, the Speaker in his letter to Members of the House stated that he would impose a time limit on the standing committees that would receive the bill incorporating President Carter's energy message. (See the Speaker's letter in the **Appendix**.)

When Majority Leader Wright introduced H.R. 6831 on May 2, 1977, the Speaker referred it to five standing committees, requiring them to complete consideration by July 13, 1977. Once four of these committees reported their parts of the measure, amended, and one was discharged from further consideration (reporting instead a freestanding bill), the Speaker referred the measure sequentially to the Energy select committee. The chair of the select committee, Representative Ashley, introduced the reported measure, as amended, as a new bill, H.R. 8444, on July 20, which the Speaker referred it to the select committee subject to a time limit of July 27, 1977.

Homeland Security (107th Congress)

The resolution creating the Homeland Security select committee in the 107th Congress (2001-2003) reiterated the Speaker's authority in House rules: "Such recommendations [from the standing committees] may be submitted not later than a time designated by the Speaker."¹⁰⁶ Majority Leader Armey and 113 Republican cosponsors introduced H.R. 5005, by request, on June 24, 2002. It was referred to 12 standing committees, for a period ending not later than July 12, 2002, "for consideration of such matters as fall within the jurisdiction" of the individual committees, and to the Homeland Security select committee, with a time limitation to be set subsequently. Once the standing committees completed their work, by drafting amendments or otherwise, they were discharged July 12, 2002, from further consideration of H.R. 5005. The House by unanimous consent agreed July 23 to a time limit of July 24 for the select committee to report, the select committee having completed its markup July 19.

Homeland Security (108th Congress)

The Select Committee on Homeland Security (108th Congress, 2003-2005) was largely treated with regard to referral and reporting as standing committees were treated.

¹⁰³ Section 4(a) of H.Res. 412, agreed to in the House April 22, 1975.

¹⁰⁴ H.Res. 977, extending the deadline to March 31, 1976, agreed to in the House January 26, 1976; and H.Res. 1121, extending the deadline to May 4, 1976, agreed to in the House March 31, 1976.

¹⁰⁵ H.Res. 97, agreed to in the House January 11, 1977. See "Authorizing Establishment of Ad Hoc Select Committee on the Outer Continental Shelf for Consideration of H.R. 1614," *Congressional Record*, vol. 123, part 1 (January 11, 1977), pp. 894-898.

¹⁰⁶ Section 6(a) of H.Res. 449, agreed to in the House June 19, 2002.

Membership and Chair

From the time of adoption of the Committee Reform Amendments of 1974 through the 105th Congress (1997-1999), the Speaker was directed by House Rule X, cl. 5 to appoint “members of the committees having legislative jurisdiction.” Since then, the Speaker may make appointments under successor Rule XII, cl. 2(c)(4) “including members of the committees of jurisdiction.” During the earlier time, the resolution creating a select committee would need to authorize other Members to be appointed if that was desired. The individual resolutions creating the Outer Continental Shelf select committee a second time, in the 95th Congress, and the Energy select committee, also in the 95th Congress, authorized the Speaker to appoint members from committees other than the standing committees of jurisdiction. Beginning in the 106th Congress (1999-2001), the resolution creating a select committee would need to limit the Speaker’s authority if only members meeting certain characteristics were desired for appointment to the select committee.¹⁰⁷

The Outer Continental Shelf and Energy select committees drew their representation and expertise from the standing committees. The Homeland Security select committee (107th Congress) was an exception among the four select committee in that its members were the parties’ leaders. The Homeland Security select committee (108th Congress) was broadly representative of the House. Each membership configuration proved capable of performing the work assigned a select committee by the House. The party ratios on the select committees were close to the party ratios in the House in the Congress in which a select committee was created.

The chairs of each of the select committees was a senior House member, but an individual who had not chaired a standing committee. In general, other Members might have regarded the individuals selected as chairs with respect and trust.

Outer Continental Shelf (94th-95th Congresses)

In the 94th Congress (1975-1976), all members of the Outer Continental Shelf select committee were drawn from the three committees named in the resolution creating it—Interior and Insular Affairs (now Natural Resources), Judiciary, and Merchant Marine and Fisheries (the relevant portions of jurisdiction now largely belonging to Natural Resources and Transportation and Infrastructure). The resolution creating the select committee provided for 16 members,¹⁰⁸ but the Speaker subsequently received unanimous consent to increase the membership to 19.¹⁰⁹

Reflecting the party ratio in the House, the majority Democrats held 13 seats and the minority Republicans held just under one-third of the seats, 6. Six members represented the Interior and Insular Affairs Committee, five the Judiciary Committee, and ten the Merchant Marine and Fisheries Committee. (Two members served on both the Interior and Merchant Marine Committees.) None of the members were chairs or ranking minority members of the committees on which they served. One member was secretary of the Democratic Caucus. Sixteen members represented coastal states, although they were not all from coastal congressional districts. Six members were from major oil- and gas-producing states. Nine members represented Northeastern

¹⁰⁷ The minority leader, in proposing minority-party Members to the Speaker for a select committee, would presumably adhere to an order of the House concerning the characteristics of committee members.

¹⁰⁸ Section 1(b) of H.Res. 412, agreed to in the House April 22, 1975. “Appointment as Members of Select Committee on Outer Continental Shelf,” *Congressional Record*, vol. 121, part 9 (April 22, 1975), p. 11271.

¹⁰⁹ “Appointment as Members of Ad Hoc Committee on Outer Continental Shelf,” *Congressional Record*, vol. 121, part 10 (May 6, 1975), p. 13093.

states, three represented Southern states, six represented Western states, and one represented a Midwestern state.

The Speaker designated as chair Representative John M. Murphy of New York, a senior member of the Merchant Marine and Fisheries Committee and chair of its Oceanography Subcommittee. Mr. Murphy had previously introduced measures on the outer continental shelf.

When the select committee was continued in the 95th Congress (1977-1979), the Speaker was authorized to appoint members of the same three committees and also “such other Members from other committees as the Speaker may appoint so as to insure the expeditious consideration and reporting of appropriate legislation.”¹¹⁰ The number of members to serve on the select committee was not specified.

Again reflecting the party ratio in the House, the majority Democrats held 13 seats and the minority Republicans held just under one-third of the seats, 6. All members but two appointed by the Speaker served on the same three committees: six were members of the Interior and Insular Affairs Committee, five of the Judiciary Committee, and eleven of the Merchant Marine and Fisheries Committee. (One served on both the Merchant Marine and Judiciary Committees, one served on both the Interior and Judiciary Committees, and two served on both the Interior and Merchant Marine Committees.) Of the two members not on these three committees, one was a member of the Rules Committee and one of the Interstate and Foreign Commerce Committee (now Energy and Commerce). Four members were new to the select committee, three Democrats and one Republican. One member re-appointed to the select committee was chair of the Interior Committee in the 95th Congress.

Fifteen members represented coastal states, although they were not all from coastal congressional districts. Six members were from major oil- and gas-producing states. Nine members represented Northeastern states, four represented Southern states, four represented Western states, and two represented Midwestern states.

Energy (95th Congress)

When the House created the Energy select committee in the 95th Congress (1977-1979), the Speaker was authorized to appoint—

thirty-seven Members of the House...from those committees of the House which he determines have subject-matter jurisdiction over the substance of the President’s message, and from such other committees as the Speaker may determine so as to insure the expeditious consideration and reporting of appropriate legislation.¹¹¹

A second resolution changed the 37 members to 40 members.¹¹² Majority Leader Wright explained that the larger number allowed another state to be represented on the select committee.¹¹³

Reflecting the party ratio in the House, the majority Democrats held 27 seats and the minority Republicans held just under one-third of the seats, 13. Eleven members represented the Interstate and Foreign Commerce Committee (now Energy and Commerce), ten the Ways and Means Committee, seven the Interior and Insular Affairs Committee (now Natural Resources), five the

¹¹⁰ Section 1(b) of H.Res. 97, agreed to in the House January 11, 1977.

¹¹¹ Section 1(b) of H.Res. 508, agreed to in the House April 21, 1977.

¹¹² H.Res. 509, agreed to in the House April 21, 1977.

¹¹³ Rep. Jim Wright, “Amending House Resolution 508, Increasing Membership on Ad Hoc Committee on Energy,” *Congressional Record*, vol. 123, part 10 (April 21, 1977), p. 11608.

Banking, Finance, and Urban Affairs Committee (now Financial Services), and four the Merchant Marine and Fisheries Committee (the relevant portions of jurisdiction now largely belonging to Natural Resources and Transportation and Infrastructure). (Two members served on both Commerce and Interior, three served on both Commerce and Merchant Marine, one served on both Banking and Interior, and one served on both Banking and Merchant Marine.)

Other committees represented were Agriculture, Appropriations, Government Operations (now Oversight and Government Reform), International Relations (now Foreign Affairs), Judiciary, Public Works and Transportation (now Transportation and Infrastructure), Rules, and Science and Technology. A number of members also served on the Joint Economic Committee.¹¹⁴ (Some members of the select committee served on one of the standing committees with subject-matter jurisdiction over energy and in addition on one of these committees.)

The chairs of the Committees on Agriculture, Banking, Finance, and Urban Affairs, Interior and Insular Affairs, Interstate and Foreign Commerce, and Ways and Means served on the select committee. In addition, the ranking minority members of the Committees on Government Operations and Science and Technology served on the select committee. The chair and ranking minority member of the Joint Economic Committee also served on the select committee. Members also included the chairs of the Democratic Caucus and the Republican Conference.

Nineteen members represented major coal-, oil-, and gas-producing states. Some of these members and others represented states with major hydroelectric or nuclear-energy facilities. Ten members were from Northeastern states, eleven from Midwestern states, eleven from Southern states, and eight from Western states.

The Speaker designated as chair a senior member of the Banking, Finance, and Urban Affairs Committee, Representative Thomas L. “Lud” Ashley of Ohio, who was chair of the Housing and Community Development Subcommittee. Mr. Ashley was also a member of the Merchant Marine and Fisheries Committee.

Homeland Security (107th Congress)

The Select Committee on Homeland Security (107th Congress) was unique among the four ad hoc committees in that it had only members of the majority Republican and minority Democratic leadership as members. The resolution creating the select committee directed the Speaker to appoint nine members, “of whom four shall be appointed on the recommendation of the Minority Leader.”¹¹⁵ The Speaker was also authorized to designate a select committee member as chair. The make-up of the select committee was mentioned but not explained in floor debate on the resolution.¹¹⁶ Reporting seemed to indicate that the creation and membership of the select committee was a bipartisan compromise that sought to give committees a role and put off jurisdictional fights between committees over the new homeland security department.¹¹⁷

¹¹⁴ “Appointment of Members of Ad Hoc Committee on Energy,” *Congressional Record*, vol. 123, part 10 (April 21, 1977), pp. 11587-11588; and “Appointment as Additional Members of Ad Hoc Committee on Energy,” *Congressional Record*, vol. 123, part 10 (April 22, 1977), p. 11819.

¹¹⁵ Section 2 of H.Res. 449, agreed to in the House June 19, 2002.

¹¹⁶ Rep. David Dreier, “Establishing the Select Committee on Homeland Security,” *Congressional Record*, vol. 149, part 8 (June 19, 2002), p. 10722.

¹¹⁷ David Nather and Karen Foerstel, “Committee Chairmen Express Concerns about Major Shift in Jurisdiction,” *CQ Weekly*, vol. 60, no. 24, June 15, 2002, p. 1583.

The party ratio on the select committee approximated the party ratio in the House. The majority Republicans held five seats and the minority Democrats four seats. Democrats held 48% of House seats and 44% of the select committee's seats. The select committee members were:

- Dick Armey, majority leader, designated as chair by the Speaker
- Tom DeLay, majority whip
- J.C. Watts Jr., Republican Conference chair
- Deborah D. Pryce, Republican Conference vice chair
- Rob Portman, House Republican leadership chair
- Nancy Pelosi, minority whip
- Martin Frost, Democratic Caucus chair
- Robert Menendez, Democratic Caucus vice chair
- Rosa L. DeLauro, assistant to the minority leader

In addition to their leadership positions, three of these Members served on the Appropriations Committee, two on the Rules Committee, one on the Ways and Means Committee, one on the Armed Services Committee, and one on both the International Relations (now Foreign Affairs) and Transportation and Infrastructure Committees. A member serving on the Appropriations Committee also served on the Intelligence Committee. Majority Leader Armey did not have committee assignments in the 107th Congress, but had previously served on the Education and Labor Committee. Caucus Chairman Frost was ranking minority member on the Rules Committee. Three members were from Texas, two from Ohio, and one each from California, Connecticut, New Jersey, and Oklahoma.

Homeland Security (108th Congress)

In the 108th Congress (2003-2005), the second Select Committee on Homeland Security bore no resemblance to the select committee of the same name in the 107th Congress. Created in the same resolution adopting House rules for the 108th Congress, the select committee comprised members appointed by the Speaker, "including Members appointed on the recommendation of the Minority Leader." In addition, although the select committee was largely being treated legislatively as if it were a standing committee, service on the select committee was exempted from the two-committee limit on assignments under Rule X, cl. 5(b)(2).¹¹⁸ The party ratio on the committee, 27 Republicans and 23 Democrats, reflected the party ratio on other standing committees.

Five members served also on the Energy and Commerce Committee, five on the Judiciary Committee, five on the Transportation and Infrastructure Committee, and three on the Ways and Means Committee. These four committees were viewed as having significant homeland security jurisdiction as defined by the Homeland Security Act. In addition, four members also served on the Agriculture Committee, seven on the Appropriations Committee, eight on the Armed Services Committee, one on the Education and the Workforce Committee (now Education and Labor), six on the Financial Services Committee, three on the Government Reform Committee (now Oversight and Government Reform), one on the House Administration Committee, four on the Intelligence Committee, one on the International Relations Committee (now Foreign Affairs), six on the Resources Committee (now Natural Resources), six on the Rules Committee, six on the Science Committee (now Science and Technology), and two on the Small Business Committee.

¹¹⁸ Section 4(a)(2) of H.Res. 5, agreed to in the House January 7, 2003.

One member also served on the Joint Economic Committee. Twenty-one members served on more than one of the standing committees listed in this paragraph.

Select committee members included nine committee chairs: Agriculture, Appropriations, Armed Services, Energy and Commerce, Intelligence, Judiciary, Rules, Science, and Transportation and Infrastructure. The chair of the Homeland Security Subcommittee of the Appropriations Committee was also a member. Two committees' ranking minority members were select committee members: Financial Services and Intelligence.

Thirteen members were from Northeastern states, four from Midwestern states, nineteen from Southern states, and twelve from Western states. The Delegates from the District of Columbia and the Virgin Islands also served on the select committee.

The Speaker designated as chair a member of the Energy and Commerce Committee, Representative Christopher C. Cox of California. Mr. Cox was also chair of the Republican Policy Committee, and had chaired the Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China in the 105th and 106th Congresses.

Resources

Each of the resolutions establishing the four select committees authorized the committees to use existing House resources. The Outer Continental Shelf select committee (94th Congress) allowed the committee to utilize the services of the staffs of "those standing committees of the House from which Members have been selected for membership on the select committee."¹¹⁹ A nearly identical provision appeared in the resolution creating the Energy select committee (95th Congress).¹²⁰ The related provision in the resolution creating the Homeland Security select committee (107th Congress) was worded more tersely but also more broadly, allowing the select committee to tap any House staff: "...the select committee may utilize the services of staff of the House."¹²¹ The same provision was included in the resolution creating the Select Committee on Homeland Security (108th Congress).¹²²

For three of the select committees, however, the House agreed to one or more funding resolutions making specific and substantial resources available. There was not a separate funding resolution for the Homeland Security select committee in the 107th Congress, which operated largely in public sessions within a two-week period.

Outer Continental Shelf (94th-95th Congresses)

The House adopted first- and second-session funding resolutions for the Outer Continental Shelf select committee in the 94th Congress (1975-1977). It also adopted an additional funding resolution for the select committee in the second session. The first-session funding resolution, agreed to in May 1975, a month after the select committee's creation, provided \$353,000, "including expenditures for the employment of investigators, attorneys, individual consultants and organizations thereof, and clerical, stenographic, and other assistants...." It also limited to

¹¹⁹ Section 3 of H.Res. 412, agreed to in the House April 22, 1975. The same provision was included in the resolution re-creating the select committee in the 95th Congress. Section 3 of H.Res. 97, agreed to in the House January 11, 1977.

¹²⁰ Section 3 of H.Res. 508, agreed to in the House April 21, 1977.

¹²¹ Section 5 of H.Res. 449, agreed to in the House June 19, 2002.

¹²² Section 4(d) of H.Res. 5, agreed to in the House January 7, 2003.

\$30,000 the amount that could be used for temporary consultants.¹²³ The resolution proscribed the use of funds for “the study of any subject which is being investigated for the same purpose by any other committee of the House.” It also directed the chair of the select committee to “furnish” the House Administration Committee with information on studies the committee “financed.”¹²⁴ Finally, the funding resolution stated specifically that funds could be expended only pursuant to authority in the resolution creating the select committee and pursuant to House Administration Committee regulations.¹²⁵

The second-session funding resolution provided \$150,000, with the same \$30,000 limitation on spending on temporary consultants.¹²⁶ The House in August 1976 agreed to another funding resolution for the select committee, making available an additional \$89,000, with a limitation of \$18,000 on spending on temporary consultants.¹²⁷ The total funding for the 94th Congress was \$592,000.

New funding resolutions were adopted when the select committee was re-created in the 95th Congress (1977-1979). In the first session, the House authorized \$350,000 for the Outer Continental Shelf select committee, with a limitation of \$50,000 on spending on temporary consultants. Other provisions remained the same as those in the 94th Congress funding resolutions, other than the citation to H.Res. 97, the resolution re-creating the select committee in the 95th Congress.¹²⁸ In the second session, the House authorized \$300,000, retaining the limitation of \$50,000 on spending on temporary consultants.¹²⁹ Total funding in the 95th Congress was \$650,000, and the total for the 94th and 95th Congresses together was \$1,242,000.

Energy (95th Congress)

In funding the Energy select committee in the 95th Congress (1977-1979), the House adopted a resolution with provisions closely tracking those contained in the funding resolutions for the Outer Continental Shelf select committee. The House in the first session authorized funding of \$212,833, with a limitation on temporary consultants of \$12,000.¹³⁰ In the second session, the House authorized \$90,000. The funding resolution did not authorize the use of consultants and contained no limit on spending for consultants.¹³¹ The second-session funding resolution apparently anticipated a conclusion to the legislative process for energy legislation by the middle of the second session. Although the select committee began to reduce its staff during the first half

¹²³ Section 1 of H.Res. 427, agreed to in the House May 22, 1975. Section 1 also allowed payments “authorized by [the] committee, signed by the chairman of [the] committee, and approved by the Committee on House Administration.”

¹²⁴ H.Res. 427, § 2.

¹²⁵ H.Res. 427, § 3.

¹²⁶ H.Res. 1021, agreed to in the House March 9, 1976. Since the House in the interim had adopted a resolution extending the reporting deadline of the select committee, Section 3 of H.Res. 1021 required expenditures pursuant to that resolution as well as the resolution creating the select committee and House Administration Committee regulations.

¹²⁷ H.Res. 1414, agreed to in the House August 26, 1976. The chair of the House Administration Committee cited the substantial differences between the House and Senate bill as the reason for the delay in completion of the legislative process, necessitating an additional funding resolution. Frank Thompson Jr., “Providing Additional Funds for the Ad Hoc Select Committee on the Outer Continental Shelf,” *Congressional Record*, vol. 122, part 22 (August 26, 1976), p. 27857.

¹²⁸ H.Res. 343, agreed to in the House March 22, 1977.

¹²⁹ H.Res. 1045, agreed to in the House April 4, 1978.

¹³⁰ H.Res. 531, agreed to in the House May 26, 1977.

¹³¹ H.Res. 1051, agreed to in the House April 4, 1978.

of 1978, the legislative process was not finished. The House, therefore, adopted another funding resolution in August 1978 to keep a small staff in place for the select committee. It authorized an additional \$50,000.¹³² The total amount authorized for the Energy select committee was \$352,833.

Homeland Security (108th Congress)

The Select Committee on Homeland Security (108th Congress) was given legislative jurisdiction over certain homeland security legislation, oversight jurisdiction over homeland security, and responsibility for a review of House rules from the perspective of homeland security. The House first adopted an interim funding resolution through March 31, 2003, authorizing \$700,000. No restrictions were attached to the authorization, although the House Administration Committee was authorized to adjust this amount, if necessary, to comply with an order under the Balanced Budget Act or a reduction in appropriations. Like earlier funding resolutions, payments were to be made on vouchers authorized by the select committee, signed by the chair, and approved by the House Administration Committee. The select committee was to expend funds pursuant to regulations of the House Administration Committee.¹³³

Subsequently, the House authorized funding for the select committee for the two sessions of the 108th Congress. It authorized \$10,952,787, in all, for the select committee's "expenses (including the expenses of all staff salaries)"—\$5,366,866 in the first session and \$5,585,921 in the second session. The wording of the full-Congress resolution suggested that the \$700,000 interim funding was included in the first session authorization. The other provisions of the resolution were the same as contained in the interim funding resolution.¹³⁴

Legislative Vehicles, Special Rules, and Reconciliation

As provided in the resolutions establishing the select committees, the Speaker referred legislation to them. Each select committee reported at least one measure with a written report. Special rules made in order House consideration of the measures reported by the Outer Continental Shelf select committee (94th-95th Congresses), Energy select committee (95th Congress), and Homeland Security select committee (107th Congress), which passed the House. Conferences were organized with the Senate on two outer continental shelf bills and the energy bill. Conference reports were adopted (except on the first outer continental shelf bill), and the measures were signed into law. The House agreed to the Senate amendment on the homeland security department bill, and it was signed into law.

In the instance of the Outer Continental Shelf select committees, Energy select committee, and Homeland Security select committee (107th Congress), majority leadership firmly supported the select committees once they were created. Not all majority or minority Members supported the select committees' policy recommendations or final conference products. While there were a number of agreements on process between the majority and minority made before these select committees were established, the majority nonetheless in each instance used its majority status to decide what policy goals to pursue and to then impose them. In addition, the relationship between the standing committees and select committees has been different for each select committee, with

¹³² H.Res. 1237, agreed to in the House August 11, 1978.

¹³³ H.Res. 77, agreed to in the House February 13, 2003.

¹³⁴ H.Res. 110, agreed to in the House May 8, 2003.

the select committee having a more influential role in two instances and a less influential role in the other two instances.

Seven measures were referred to the Select Committee on Homeland Security (108th Congress) and considered in committee, of which two became law. (One measure referred to the select committee was related to one of the two measures that became law.)¹³⁵

Outer Continental Shelf (94th Congress)

The measure named (H.R. 6218) in the resolution creating the Outer Continental Shelf select committee was introduced the same day the select committee was created, April 22, 1975. The sponsor was Representative Murphy, chair of the select committee. The two cosponsors were Representative Leonor K. Sullivan, chair of the Merchant Marine and Fisheries Committee, and Representative Peter W. Rodino, chair of the Judiciary Committee. The measure was described as a “comprehensive” bill to amend the Outer Continental Shelf Lands Act of 1953, drafted in anticipation of the select committee’s creation.¹³⁶

The select committee held hearings in Washington, DC, and field hearings in locations on the Atlantic, Gulf, and Pacific coasts. It also conducted meetings dealing with offshore oil and gas exploration and development in the United Kingdom and Norway. Markup sessions began in December 1975 and concluded in April 1976.¹³⁷ The committee reported H.R. 6218 with an amendment in the nature of a substitute on May 4, 1976 (H.Rept. 94-1084, including additional, supplemental, and minority views).

The chair and other select committee members requested an open rule with two hours of general debate.¹³⁸ The Rules Committee reported a special rule May 26, 1976 (H.Res. 1217, H.Rept. 94-1194), which the House agreed to June 4 by a vote of 294-27. The rule provided two hours of general debate, to be equally divided and controlled by the chair and ranking minority member of the select committee. Germaneness points of order against the committee amendment were waived. The select committee’s amendment in the nature of a substitute was to be considered as an original bill, the amendment was to be read by titles, and amendments to it were to be considered under the five-minute rule. A motion to recommit with or without instructions was made in order.¹³⁹ A companion Senate-passed measure, S. 521, was at the Speaker’s table, and the special rule made it in order to strike the provisions of that bill and insert the provisions of H.R. 6218 as passed by the House.

The House considered the measure on four days in June and July 1976, passing the measure July 21 by 247-140. The House then amended S. 521 with the text of H.R. 6218 as passed, the Senate subsequently requested a conference, and the House agreed to a conference and appointed conferees on September 10. All conferees were members of the select committee. After two days of meetings, the conference report was filed in each chamber September 20. The conference report (H.Rept. 94-1632) was called up first in the House, on September 28. A motion to

¹³⁵ Legislative summaries in this section were derived from the Legislative Information System, *Congressional Record*, and special rules resolutions reported by Rules Committee.

¹³⁶ U.S. Congress, House, Ad Hoc Select Committee on the Outer Continental Shelf, *Report on the Activities of the Ad Hoc Select Committee on the Outer Continental Shelf during the 94th Congress*, 94th Cong., 2nd sess., H.Rept. 94-1783 (Washington, DC: GPO, 1977), pp. 5-6.

¹³⁷ *Ibid.*, pp. 6-8.

¹³⁸ *Ibid.*, p. 8.

¹³⁹ The *right* to offer a motion to recommit with instructions was guaranteed in the 104th Congress. Section 210 of H.Res. 6, agreed to in the House January 4, 1995.

recommit the report to the committee of conference was agreed to, 198-194, the end of legislative action on the outer continental shelf in the 94th Congress.

Outer Continental Shelf (95th Congress)

The measure named (H.R. 1614) in the resolution re-creating the Outer Continental Shelf select committee was introduced the same day the select committee was created, January 11, 1977. H.R. 1614 and its Senate companion, S. 9, were identical: their text was the text of conference report from the 94th Congress.

The select committee held hearings in Washington, DC. Markup sessions were conducted in June and July 1977. The committee by 11-8 reported H.R. 1614 with an amendment in the nature of a substitute on August 29, 1977 (H.Rept. 95-590, including additional, supplemental, dissenting, minority, and additional minority views).¹⁴⁰

The chair and other select committee members requested an open rule with one hour of general debate.¹⁴¹ The Rules Committee reported a special rule January 24, 1978 (H.Res. 964, H.Rept. 95-848), which the House agreed to January 25 by a vote of 247-158. The rule provided three hours of general debate, two hours to be equally divided and controlled by the chair and ranking minority member of the select committee. One hour was to be equally divided between two named members of the select committee, one Democratic and one Republican, who were expected to offer amendments in the nature of a substitute to the text made in order for the House's consideration. Specified points of order against the committee amendment were waived. The select committee's amendment in the nature of a substitute was to be considered as an original bill, the amendment was to be read by titles, and amendments to it were to be considered under the five-minute rule. A motion to recommit with or without instructions was made in order.¹⁴² The Senate-passed companion measure, S. 9, was at the Speaker's table, and the special rule made it in order to strike the provisions of that bill and insert the provisions of H.R. 1614 as passed by the House.

The House considered the measure on five days in January and February 1978, passing the measure February 2 by 291-91. The House then amended S. 9, the Senate subsequently requested a conference, and the House agreed to a conference and appointed conferees on March 21. All conferees but one were members of the select committee; one limited conferee, a Democratic member of the Interstate and Foreign Commerce Committee (now Energy and Commerce), was also appointed. After 10 days of meetings, the conference report was filed in each chamber August 10. The conference report (H.Rept. 95-1474) was called up first in the House, on August 17, and adopted, 335-18. The Senate followed suit on August 22, and President Carter signed the measure into law September 18.¹⁴³

¹⁴⁰ U.S. Congress, House, Ad Hoc Select Committee on the Outer Continental Shelf, *Report on the Activities of the Ad Hoc Select Committee on the Outer Continental Shelf during the 95th Congress*, 95th Cong., 2nd sess., H.Rept. 95-1835 (Washington, DC: GPO, 1979), pp. 10-11.

¹⁴¹ *Ibid.*, p. 8.

¹⁴² The *right* to offer a motion to recommit with instructions was a change made in the 104th Congress. Section 210 of H.Res. 6, agreed to in the House January 4, 1995.

¹⁴³ P.L. 95-372; 92 Stat. 629 (1978).

Energy Select Committee (95th Congress)

The resolution creating the Energy select committee identified the President's message on energy as the jurisdiction of the select committee. The resolution was agreed to by the House April 21, 1977, and Majority Leader Wright introduced the President Carter's plan as H.R. 6831 on May 2. Pursuant to the resolution and a Dear Colleague letter from Speaker O'Neill, the Speaker made a split referral of the bill to five standing committees: Banking, Finance, and Urban Affairs, Government Operations, Interstate and Foreign Commerce, Public Works and Transportation, and Ways and Means.¹⁴⁴ Exercising authority granted by House rules, the Speaker set a time limit of July 13 for the standing committees to report. Three committees reported on July 13—Government Operations (H.Rept. 95-496, Part II, with dissenting views), Public Works and Transportation (H.Rept. 95-496, Part I), and Ways and Means (H.Rept. 95-496, Part III, with supplemental, additional, minority, and additional minority views). The Banking Committee was discharged from further consideration of H.R. 6831; however, the committee reported a freestanding bill, the National Weatherization Act (H.R. 7893, H.Rept. 95-488, Part 1, with supplemental views), which was sequentially referred to the Energy select committee. The Commerce Committee was granted an extension to July 18 (H.Rept. 95-496, Part IV, with minority, additional, and supplemental views).¹⁴⁵ H.R. 6831 was referred sequentially by the Speaker to the Energy select committee.

During May and June, the select committee had held three hearings, with high-ranking federal officials as witnesses. During June and July, it held 21 single-topic public briefings, which proceeded informally, with experts from research organizations, government agencies, and other entities; the briefings also included presentations by professional staff members of four of the standing committees and the Joint Committee on Taxation.¹⁴⁶ On July 15, the select committee adopted an "order of business resolution" that divided the legislation into seven topical areas, clustering related matters from different titles, parts, or subparts of the bill, so that the select committee could consider the legislation topically.¹⁴⁷

On July 20, the chair of the Energy select committee, Representative Ashley, introduced H.R. 8444, containing the text of H.R. 6831 as proposed to be changed by the standing committees. This action put in place one aspect of the Speaker's Dear Colleague letter dealing with floor procedures: "When this measure goes to the Rules Committee, I will recommend that the legislation reported by the standing committees be considered as an original bill...." (See **Appendix**.) The Speaker referred the measure to the select committee, with a time limitation of July 27. The select committee marked up the bill July 20, 21, and 22, and reported it with amendments, 26-14 (H.Rept. 95-943, vols. 1 and 2,¹⁴⁸ with supplemental, minority, and additional views). Pursuant to the Speaker's Dear Colleague letter, the select committee could recommend

¹⁴⁴ Now, respectively, the Committees on Financial Services, Oversight and Government Reform, Energy and Commerce, Transportation and Infrastructure, and Ways and Means.

¹⁴⁵ The Interstate and Foreign Commerce Committee had jurisdiction over the largest portion of the bill. The Subcommittee on Energy and Power held 16 days of hearings and held markup meetings on 17 days. The full committee held 6 days of markup meetings. The other committees also conducted numerous days of hearings and markups, for example, 16 days of hearings and 20 days of markup meetings in the Ways and Means Committee. See U.S. Congress, House, Ad Hoc Select Committee on Energy, *Activity Report of the Ad Hoc Select Committee on Energy (April 21, 1977 - January 2, 1979)*, 95th Cong., 2nd sess., H.Rept. 95-1820 (Washington, DC: GPO, 1979), pp. 22-23.

¹⁴⁶ Ibid., pp. 13-21.

¹⁴⁷ Ibid., pp. 23-24.

¹⁴⁸ Volume 2 was an appendix containing the reports of the five standing committees.

amendments to the standing committees' proposed legislation, but it could not change the standing committees' recommendations.

No consensus on a special rule governing floor consideration existed within the select committee.¹⁴⁹ The Speaker, however, had included in his Dear Colleague letter some information on what would be requested of the Rules Committee in a special rule:

When this measure goes to the Rules Committee, I will recommend that the legislation reported by the standing committees be considered as an original bill, with the ad hoc committee amendments in order thereto. I will further recommend that on the floor each standing committee manage those portions of the bill that fall within its jurisdiction.¹⁵⁰

Because of interest in the Rules Committee's action, the committee held its July 28 hearing in the Cannon Caucus Room, and took testimony from Members over the course of nearly 12 hours.¹⁵¹

The Rules Committee reported a special rule July 28 (H.Res. 727, H.Rept. 95-546). The special rule would today be called a structured rule. Its complexity led, during the consideration of H.R. 8444, to numerous parliamentary questions concerning the special rule's provisions. The special rule allowed general debate for "one legislative day," to be controlled and equally divided by the chair and ranking minority member of the select committee. In keeping with the Speaker's plan, consideration of H.R. 8444 was made in order, and the bill was to be read for amendment by part rather than by section. The special rule made in order the 23 amendments recommended by the select committee; amendments to those amendments were in order. It also made in order 11 amendments to be offered by individual Members and a minority amendment in the nature of a substitute (consisting of the text of H.R. 8555). Two Members' amendments and the amendment in the nature of a substitute were subject to amendment if such amendments were offered at the direction of the select committee. Some additional restrictions applied to specific amendments. Specific points of order were waived against the bill, and all points of order were waived against the amendments made in order. A motion to recommit with or without instructions was made in order.¹⁵² The special rule was adopted July 29 by a vote of 238-148.

Speaker O'Neill established a schedule to complete House action on the bill before the August recess began August 6: general debate would begin at 12:00 noon on August 1, and the House would debate the measure on each of the next four days from 10:00 a.m. - 7:00 p.m.¹⁵³ The House August 5, 1977, passed the bill 244-177.

The Senate considered five bills rather than one, in each case amending a House vehicle with the measure passed by the Senate. The House requested a conference on four of the bills on October 13, 1977. After the Senate passed the energy tax bill and sent it to the House, the House requested a conference with the Senate on that bill on November 3. The House appointed the same 25 conferees on each bill; all of the conferees were drawn from the select committee. The Senate, in

¹⁴⁹ U.S. Congress, House, Ad Hoc Select Committee on Energy, *Activity Report of the Ad Hoc Select Committee on Energy (April 21, 1977 - January 2, 1979)*, 95th Cong., 2nd sess., H.Rept. 95-1820 (Washington, DC: GPO, 1979), p. 29.

¹⁵⁰ See **Appendix**.

¹⁵¹ U.S. Congress, House, Ad Hoc Select Committee on Energy, *Activity Report of the Ad Hoc Select Committee on Energy (April 21, 1977 - January 2, 1979)*, 95th Cong., 2nd sess., H.Rept. 95-1820 (Washington, DC: GPO, 1979), p. 29.

¹⁵² The right to offer a motion to recommit with instructions was guaranteed in the 104th Congress. Section 210 of H.Res. 6, agreed to in the House January 4, 1995.

¹⁵³ Bob Rankin, "Gas Deregulation Vote Set in Energy Debate," *Congressional Quarterly Weekly Report*, vol. XXXV, no. 31, July 30, 1977, p. 1563.

agreeing to conference, appointed different conferees on each of the five bills. Conferees for four bills were drawn from the Senate Energy and Natural Resources Committee; conferees on the energy tax bill were drawn from the Senate Finance Committee. The conference proceeded on two tracks, with the four non-tax measures considered on one track, beginning October 18, and the tax measure considered on a second track, beginning November 9. The conference reports on the five bills were filed in the House between October 10-12, 1978, just shy of a year after the conference first met.¹⁵⁴

On October 12, 1978, the Rules Committee, with 11 Democratic members and 5 Republican members, deadlocked 8-8 on two choices—separate votes on the five conference reports or one en bloc vote. Advocates and opponents of the package of energy bills believed that the natural gas policy bill would be defeated if voted on separately. When the committee reconvened on October 13, one Democrat changed his vote to support an en bloc vote and two Democrats voted present on the proposal to hold an en bloc vote, the committee thereby voting 9-5 for an en bloc vote.¹⁵⁵

In addition to the en bloc vote, the special rule (H.Res. 1434, H.Rept. 95-1782) provided for four hours of debate, controlled and equally divided by the chair and ranking minority member of the Energy select committee.¹⁵⁶ The first hour of debate was to be confined to the natural gas policy bill. All points of order were waived. The previous question was considered as ordered on the conference reports, and the vote on approving the conference reports was not subject to a demand for a division of the question or to a motion to reconsider. The key vote on the special rule occurred on the previous question motion, which was agreed to 207-206. The special rule was adopted on a voice vote.

The House then waited for the Senate to agree to the final conference—on the energy tax bill. The Senate completed action October 14, and the House voted en bloc 231-168 October 15 (legislative day October 14) to adopt the five conference reports. President Carter signed the five measures into law November 9, 1978.¹⁵⁷

Homeland Security (107th Congress)

When the House created the select committee on June 19, 2002, it granted the committee jurisdiction over the “establishment of a department of homeland security,” but left it to the Speaker to decide what to refer to the committee.¹⁵⁸ Once President Bush submitted draft legislation to Congress, Majority Leader Arney introduced it by request June 24 (H.R. 5005). The Speaker referred the bill to the select committee “for a period to be subsequently determined by the Speaker,” and in addition to the Committees on Agriculture, Appropriations, Armed Services, Energy and Commerce, Financial Services, Government Reform, Intelligence, International Relations, the Judiciary, Science, Transportation and Infrastructure, and Ways and

¹⁵⁴ The bills and conference reports were as follows: coal conversion—H.R. 5146, H.Rept. 95-1749; public utility rates—H.R. 4018, H.Rept. 95-1750; energy conservation—H.R. 5037, H.Rept. 95-1751; natural gas policy—H.R. 5289, H.Rept. 95-1752; and energy tax—H.R. 5263, H.Rept. 95-1773.

¹⁵⁵ U.S. Congress, House, Ad Hoc Select Committee on Energy, *Activity Report of the Ad Hoc Select Committee on Energy (April 21, 1977 - January 2, 1979)*, 95th Cong., 2nd sess., H.Rept. 95-1820 (Washington, DC: GPO, 1979), p. 77; and Ann Pelham, “Energy Bill: The End of an Odyssey,” *Congressional Quarterly Weekly Report*, vol. XXXVI, no. 42, October 21, 1978, p. 3042.

¹⁵⁶ Contingency language was included in the rule to deal with the conference report on the energy tax bill—if the Senate did not agree to that conference report before the House took up the other conference reports.

¹⁵⁷ P.L. 95-617; 92 Stat. 3117 (1978); P.L. 95-618; 92 Stat. 3174 (1978); P.L. 95-619; 92 Stat. 3206 (1978); P.L. 95-620; 92 Stat. 3289 (1978); and P.L. 95-621; 92 Stat. 3350 (1978).

¹⁵⁸ H.Res. 449, agreed to in the House June 19, 2002.

Means,¹⁵⁹ “for a period ending not later than July 12, 2002.” All committees but for the Armed Services and Intelligence Committees ordered H.R. 5005 reported on July 12, and all committees were discharged from further consideration of the bill that day. Pursuant to the resolution creating the select committee, the standing committees submitted their recommendations to the select committee,¹⁶⁰ not the House, and therefore did not publish numbered House reports.

The select committee held one hearing before the standing committees reported and three hearings after they reported. High-ranking federal officials testified, but most of the witnesses were the chairs and ranking minority members of the standing committees that had considered H.R. 5005. Other Representatives also testified. The select committee held a markup on June 19, and reported the bill with an amendment in the nature of a substitute on a party-line 5-4 vote (H.Rept. 107-609, Part 1, with minority and dissenting views).

On July 25, the Rules Committee by voice vote reported a structured rule (H.Res. 502, H.Rept. 107-615). The special rule allowed 90 minutes for general debate, to be controlled and equally divided by the chair and ranking minority member of the select committee. The amendment in the nature of a substitute was to be considered as an original bill. Eighteen amendments were made in order.¹⁶¹ The rule provided that the amendments made in order—

...may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole.¹⁶²

All points of order against consideration of the bill, the amendment in the nature of a substitute, and the amendments made in order were waived.

The special rule also allowed a procedure for the consideration of amendments en bloc at the initiative of the chair of the select committee. The select committee chair was authorized to—

...offer amendments en bloc consisting of amendments printed in the report of the Committee on Rules not earlier disposed of or germane modifications of any such amendment. Amendments en bloc...shall be considered as read (except that modifications shall be reported), shall be debatable for 20 minutes equally divided and controlled by the chairman and ranking minority member of the Select Committee on Homeland Security or their designees, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole.¹⁶³

¹⁵⁹ The Government Reform Committee is now the Oversight and Government Reform Committee. The International Relations Committee is now the Foreign Affairs Committee. The Science Committee is now the Science and Technology Committee.

¹⁶⁰ Section 6 of H.Res. 449, agreed to in the House June 19, 2002.

¹⁶¹ A Congressional Quarterly markup report stated: “The list of amendments includes both Republican and Democratic priorities.” Mary Dalrymple, “Panel Recommends Rule for Homeland Security Debate,” CQ Committee Coverage, July 25, 2007, available at [<http://www.cq.com/display.do?dockey=/cqonline/prod/data/docs/html/committees/107/committees107-2002072500045053.html@committeesarchive&metapub=CQ-COMMITTEEMARKUPS&searchIndex=3&seqNum=1>].

¹⁶² Section 2(c) of H.Res. 502, agreed to in the House July 25, 2002. In addition, this section provided an exception, contained in Section 4, to offering amendments in the order specified. The exception allowed a change in order for a specific amendment with one hour’s notice to the House by the chair of the select committee.

¹⁶³ H.Res. 502, § 3. This section also allowed the original proponent of an amendment included in the en bloc amendments to insert a statement in the *Congressional Record* at an appropriate place, and contained a technical provision when an amendment included in the en bloc amendments was in the form of a motion to strike.

Since the special rule was called up on the House floor on July 25, the same day that it was reported from the Rules Committee, it was necessary to waive the one-day layover requirement, which the House did by voice vote. The House then debated the rule and adopted it on a voice vote.

The House debated H.R. 5005 on July 25 and 26, passing the measure July 26 on a vote of 295-132. The Senate began consideration of amendments to H.R. 5005, but did not complete action before the election. Following the election and agreement by a majority of Senators to the Bush Administration's wishes regarding the new department's personnel system, the House, seeking to facilitate conclusion of the lameduck session, passed a second homeland security department bill (H.R. 5710) incorporating this change and other modifications.¹⁶⁴ The new measure was considered under a closed rule (H.Res. 600, H.Rept. 107-773); the special rule was adopted 237-177 on November 13, 2002. The bill was passed later that day, 299-121.

The Senate continued its consideration on H.R. 5005 and on November 19 on a vote of 90-9 passed it with an amendment. The House agreed on November 22 by unanimous consent to H.R. 5005 as amended by the Senate, and President Bush signed the measure into law.¹⁶⁵

Homeland Security (108th Congress)

When the House created the select committee on January 7, 2003, it granted the committee jurisdiction over the "Homeland Security Act of 2002," but left it to the Speaker to decide what to refer to the committee.¹⁶⁶ Seven bills were referred to the select committee, and all were considered by it.

Exclusive Referral

Two measures were referred solely to the select committee. H.Res. 286, a resolution of inquiry, pertained to use of federal agency resources to locate members of Texas legislature. The resolution was reported adversely by the select committee July 21, 2003 (H.Rept. 108-223), and placed on the House Calendar.

H.R. 1416, the Homeland Security Technical Corrections Act of 2003, was reported amended by the select committee May 15, 2003 (H.Rept. 108-104). The House passed the measure under suspension of the rules procedures by a vote of 415-0 on June 24, 2003. The Senate Governmental Affairs Committee subsequently reported the House-passed measure, and it was placed on the Senate calendar.

Primary Referral

The select committee was designated the committee with primary referral on one measure, H.R. 3266, the Faster and Smarter Funding for First Responders Act of 2004, which was referred in addition to four standing committees. The select committee reported the bill April 2, 2004 (H.Rept. 108-460, Part I). All the other committees reported, but one, which was discharged from further consideration of the measure. The bill was placed on the Union Calendar.

¹⁶⁴ Mary Dalrymple, "Obstacles Cleared from Path of Homeland Bill," *CQ Daily Monitor*, vol. 38, no. 164, November 14, 2002, pp. 1-2.

¹⁶⁵ P.L. 107-296; 116 Stat. 2135 (2002).

¹⁶⁶ Section 4 of H.Res. 5, agreed to in the House January 7, 2003.

Additional Referral

H.R. 10, the 9/11 Recommendations Implementation Act, was referred to the Intelligence Committee as the primary committee and in addition to 12 other committees, including the select committee. The measure was marked up by the select committee, and the committee was discharged from further consideration on October 5, 2004. The special rule resolution reported by the Rules Committee (H.Res. 827, H.Rept. 108-751) was a structured rule, adopted in the House by a voice vote. It provided 3 hours, 40 minutes of general debate, with 40 minutes controlled and equally divided by the chair and ranking minority member of the select committee. The House passed House on a vote of 282-134 on October 8. Pursuant to the special rule, the House was to be considered to have passed the Senate related bill, S. 2845, when received, as amended with House bill. The conference report was filed in the House December 7 (H.Rept. 108-796). A special rule (H.Res. 870, H.Rept. 108-797) that waived points of order against the conference report was agreed to by a voice vote the same day, and the House later adopted the conference report, 336-75. The conference report was subsequently agreed to by Senate, and the measure was signed into law December 17, 2004.¹⁶⁷

H.R. 2122, the Project BioShield Act of 2003, was referred to the Energy and Commerce Committee and in addition to three other committees including the select committee. Three committees reported the measure, including on July 8 the select committee (H.Rept. 108-147, Part III); one committee was discharged from further consideration. The House considered the bill pursuant to a unanimous consent agreement, entered July 15, that was similar to a special rule.¹⁶⁸ The agreement made in order an amendment in the nature of a substitute adopted in lieu of amendments by select committee and another committee; waived all points of order against the bill as amended; allowed 90 minutes of debate, with 15 minutes controlled and equally divided by the chair and ranking minority member of the select committee. The House passed the bill July 16 on a vote of 421-2. The Senate subsequently passed a related bill, S. 15, which the House then passed July 14, 2004, clearing the measure for the President, who signed it.¹⁶⁹

Two identical measures, H.R. 2886 and H.R. 4259, Department of Homeland Security Financial Accountability Act, were referred to the Government Reform Committee¹⁷⁰ and in addition to the select committee. H.R. 2886 was reported from the select committee November 12, 2003 (H.Rept. 108-358, Part I). The Government Reform Committee reported H.R. 4259 on June 9, 2004, and the select committee was discharged from further consideration. The House suspended the rules and passed H.R. 4259 by voice vote on July 20. It was subsequently passed by the Senate and signed into law.¹⁷¹

Expiration of Select Committee

The expiration of an ad hoc select committee's existence can be a date certain, the end of a Congress or of a session of Congress, the occurrence of an event, the taking of an action, or another discernible time frame. Select committees are established by simple resolution, which expire with the sine die adjournment of Congress. Even if established in the rules of the House,

¹⁶⁷ P.L. 108-458; 118 Stat. 3638 (2004).

¹⁶⁸ Rep. Doc Hastings, remarks in the House, "Making in Order at Any Time Consideration of H.R. 2122, Project BioShield Act of 2003," *Congressional Record*, daily edition, vol. 149, July 15, 2003, H6834-H6841.

¹⁶⁹ P.L. 108-276; 118 Stat. 835 (2004).

¹⁷⁰ Now the Oversight and Government Reform Committee.

¹⁷¹ P.L. 108-330; 118 Stat. 1275 (2004).

which are also adopted by resolution, the existence of a select committee expires no later than noon on January 3 of odd-numbered years—as does the existence of the rules and committees of the House.¹⁷²

Three ad hoc select committees—Outer Continental Shelf (94th-95th Congresses), Energy (95th Congress), and Homeland Security (107th Congress)—were set to expire, pursuant to the resolutions creating them, when the legislative process concluded, including when any veto message was disposed of. The provision of the Outer Continental Shelf select committee resolution provided:

The committee shall expire upon completion of the legislative process, including final disposition of any veto message, with respect to all legislation reported by the committee.¹⁷³

Nearly identical language was used in the Energy select committee resolution.¹⁷⁴

Somewhat different language achieving the same result was used in establishing the Homeland Security select committee (107th Congress):

The select committee shall cease to exist after final disposition of a bill described in section 6(a), including final disposition of any veto message on such bill.¹⁷⁵

The Select Committee on Homeland Security (108th Congress) was largely treated legislatively as standing committees were treated, and the select committee was established for the whole 108th Congress, but only for the 108th Congress:

Establishment.—During the One Hundred Eighth Congress, there is established a Select Committee on Homeland Security.¹⁷⁶

Conclusion

In developing legislation matched to a strategic policy goal, a number of advantages can accrue to the House by using an ad hoc select committee with legislative authority. (Discussion in this part will refer to “legislation”; the phrase is intended to include the alternatives of one bill or a set of related bills.) A select committee, however, cannot guarantee success, although there are some factors that might increase the potential for success.

Advantages

Efficiency

If the House is attempting to address an issue comprehensively and in a timely fashion, it may confront a situation where the standing committees’ jurisdiction over the issue is fragmented or overlapping. No one committee might be able to assert its jurisdictional leadership, or, alternately,

¹⁷² *Deschler’s Precedents of the United States House of Representatives*, prepared by Lewis Deschler, parliamentarian of the House, H.Doc. 94-661, vol. 1, ch. 1, §10 (Washington, DC: GPO, 1977), pp. 61-64.

¹⁷³ Section 5 of H.Res. 412, agreed to in the House April 22, 1975. The provision was repeated in the resolution re-establishing the select committee in the 95th Congress (1977-1979): section 5, of H.Res. 97, agreed to in the House January 11, 1977.

¹⁷⁴ Section 4 of H.Res. 508, agreed to in the House April 21, 1977.

¹⁷⁵ Section 7(a) of H.Res. 449, agreed to in the House June 19, 2002.

¹⁷⁶ Section 4(a)(1) of H.Res. 5, agreed to in the House January 7, 2003.

more than one committee can assert jurisdictional leadership. The result could be competing pieces of legislation reported from committees deeply invested in their product.

For there to be orderly consideration of such an issue by the House, a means will need to be found to handle the competing legislation. One option is to use a select committee with legislative authority. A select committee could supplant the standing committees as the Outer Continental Shelf select committee did; it could consider the work of the standing committees as the Energy and Homeland Security (107th Congress) select committees did; or a select committee could draft legislation that would then be considered by the standing committees, an option that has not been used since the Committee Reform Amendments of 1974.

Coupled with the Speaker's authority to establish time limitations for committees to report, a select committee could allow the House to look at a "problem as one composite problem," as Majority Leader Wright said in 1977,¹⁷⁷ and to move with a "sense of deliberative urgency," as Rules Chairman Dreier said in 2002.¹⁷⁸

Transparency

When standing committees report competing legislation, the House often looks to the majority leadership or the Rules Committee to determine what will be the legislative vehicle that the House considers and what amendment procedure will be followed. A special rule reported from the Rules Committee could provide for consideration of a legislative vehicle different from that reported from any of the standing committees and will provide an amendment process. If adopted by the House, the special rules resolution will govern procedures used to consider the legislation identified in the resolution.

Alternately, this process of reconciling texts could be performed in one or more open, formal markup meetings by a select committee, as was done by the Energy and Homeland Security (107th Congress) select committees. In the former case, the Energy select committee considered parts of the standing committees' reported legislation topically and, pursuant to the Speaker's directive, developed amendments for the House's consideration. In the latter case, the Homeland Security select committee considered the standing committees' recommendations, but developed its own amendment in the nature of a substitute that was then considered by the House.

In the instance of the Outer Continental Shelf select committee, the standing committees were supplanted, but the select committee operated in open markup sessions.

A select committee can provide a mechanism for a more transparent process for the development of legislation and amendments.

New Forum

In a standing committee, there may be established policy preferences related to a specific issue, and those preferences might be ones favored or not favored by a House or a party majority. These policy preferences might be similar or dissimilar to a presidential proposal. They might be able to attract broad congressional and public support or they might not be able to do so.

In a standing committee, there are also likely established relationships among committee members, committee staff, federal executive officials, interest groups, and others, such as public

¹⁷⁷ Rep. Jim Wright, "Ad Hoc Committee on Energy," *Congressional Record*, vol. 123, part 10 (April 21, 1977), p. 11550.

¹⁷⁸ Rep. David Dreier, "Establishing the Select Committee on Homeland Security," *Congressional Record*, vol. 148, part 8 (June 19, 2002), p. 10722.

officials and the media. Interactions based on these relationships could facilitate or impede the policy process, and are also likely to influence policymaking.

When contemplating the consideration of comprehensive legislation, an ad hoc select committee is one option for circumventing, overcoming, mediating, or otherwise responding to differences between standing committees and the standing committees' individuality. Even with a membership that is representative of standing committees of jurisdiction, a select committee provides a new forum with fewer established relationships and defined policy preferences. It could also play a mediating or integrating or deciding role in considering recommendations from standing committees, leadership, the President, and perhaps elsewhere.

A select committee could be part of a legislative effort to develop legislation matched to a strategic policy goal.

Coherence

With so-called comprehensive legislation, it can be difficult to ensure that each provision is compatible with other provisions. The problem is compounded when several committees report legislation. The House often looks to the majority leadership or the Rules Committee to deal with this kind of problem in determining what will be the legislative vehicle that the House will consider.

Again, alternately, this process of developing a coherent text could be performed in one or more open, formal markup meetings by a select committee, as was done by the Energy and Homeland Security (107th Congress) select committees. Complete coherence cannot be guaranteed, but the process used by the Energy select committee could be a model for seeking a coherent text. The Energy select committee received briefings from the professional staffs of the standing committees that marked up and reported legislation, it adopted an order of procedure to group topically the provisions reported by the standing committees, and it then marked up topically the bill it considered. The Homeland Security select committee held hearings at which the chairs and ranking minority members of the standing committees could explain their recommendations to the select committee.

The Outer Continental Shelf select committee considered its legislation exclusively, presumably enhancing the select committee's ability to ensure coherence.

A select committee can provide a mechanism for developing legislation and amendments that are coherent.

Cohesiveness

The broader the scope of legislation and the higher the profile of legislation, the more attractive the option of a select committee might be as a means of dealing with controversial provisions and keeping them as a part of comprehensive legislation. A select committee might be able to report provisions that are not acceptable to a standing committee of jurisdiction, or it might be better able to mediate conflicting views to draft a compromise. There are other ways that controversial provisions can be made part of broader legislation, such as through action by the Rules Committee.

Another option is for a select committee to report controversial provisions as part of a legislative package. It took two Congresses for the Outer Continental Shelf select committee to find the right legislative package to pass both chambers and be signed into law by the President. The legislative package of the Energy select committee protected the conference report's natural gas provisions, which Members of nearly every perspective believed would be defeated if those provisions were

voted on separately by the House. Individual committees and their members opposed provisions that included certain agencies or programs within their jurisdiction in the new homeland security department, but most Members of both parties supported creation of the department.

A select committee can provide a mechanism for keeping together legislation matched to a strategic policy goal.

Potential Shortcomings

Delay after Committee Consideration

A select committee might be used to expedite consideration of legislation through committee in the House. Legislation it reports, however, must still be able to obtain the support of a majority in the House, and be passed by the Senate, reconciled by the two chambers, and signed into law by the President.

The first conference report brought to the House by the Outer Continental Shelf select committee failed; the select committee was successful only in the following Congress. The House employed a select committee to move energy legislation expeditiously through committee and through orderly floor consideration. The Senate, however, used five legislative vehicles, and conferees met for nearly a year seeking a conference agreement acceptable to the President that would also pass both houses. The House passed legislation creating a department of homeland security less than two months after it was first proposed by the President, but Senate consideration continued through the fall and after the election.

Lack of Majority Support

The efforts of a select committee might enhance the opportunity to draft legislation that has majority support, but it cannot guarantee that outcome. In the instances of both outer continental shelf legislation and energy legislation, the conference agreements with the Senate ran into trouble when they were considered by the House. As already mentioned, the outer continental shelf conference report failed on a motion to recommit in the 94th Congress. The special rule governing consideration of the energy conference report in the 94th Congress was cleared by just one vote when the House voted 207-206 to move the previous question.

Failure of Compromise and Comity

While some decisions of the Outer Continental Shelf, Energy, and Homeland Security (107th Congress) select committees can be characterized as compromises, the majority in each instance used its status to work its will. Perhaps consequently, both the Outer Continental Shelf (95th Congress) and Energy select committees reported on largely partisan votes, with some majority members voting with the minority against reporting a measure. The Homeland Security select committee (107th Congress) reported legislation on a party-line vote.

Absence of Bicameral Agreement

As is already evident, a strong majority in one chamber does not guarantee support for the same policy decisions in the second chamber. The Senate gave strong votes in two Congresses to outer continental shelf legislation, but it was only when a second conference report was presented to the House—in yet a third Congress—did the House agree to the conference report. While the House acted promptly on President Carter's energy plan, and the Senate completed its consideration two-and-one-half months later—still within the first session—it took nearly a year for conferees

to come to agreement. The homeland security department also passed the House promptly, but the Senate completed its work in a lameduck session only after the general election seemed to deliver a political message that Members interpreted in part as a decision on the legislation.

Some Factors in a Select Committee's Effectiveness

Bipartisan Creation

Each of the four select committees was created after bipartisan discussion and with bipartisan support. This factor in each instance did not bridge policy differences when they were debated and voted on, but it perhaps contributed to leaders and Members being invested in the select committee as a critical part of the process of considering legislation.

Support of Leadership

Concomitantly, the support of each party's leaders through bipartisan discussions seemed to lead to at least tacit agreement on appointing members of the select committee who would support the goal of reporting legislation. Again, leadership support did not bridge policy differences when they were debated and voted on, but leaders appointed members who favored legislation even if they had strong views on that legislation. Minority Leader Rhodes's comment on appointing members of the Energy select committee stand out, "I intend to appoint Members to the committee from the Republican side who will want legislation, and not those who do not want it."¹⁷⁹

Leader support, especially with at least some previously agreed-on procedures, can also facilitate the development of procedures by which the House will consider legislation reported by a select committee. The legislation reported by the Outer Continental Shelf select committee was considered under an open rule. The legislation reported by the Energy and Homeland Security (107th Congress) select committees was considered under structured rules. While there was criticism of some specific decisions made on amendments, the special rules were easily approved.

Support of Standing Committees

In the instance of the Outer Continental Shelf, Energy, and Homeland Security (107th Congress) select committees, the roles of the standing committees and the participation of their members gave them a stake in the work of the select committees. All of the Outer Continental Shelf select committee members were drawn from the committees of jurisdiction in the 94th and 95th Congresses, except for two members in 95th Congress. More than three-fourths of the members of the Energy select committee served on one or more of the five standing committees with significant jurisdiction over energy. In addition, a process was used to protect the expertise and work of the standing committees. The Homeland Security select committee had only party leaders as members, but the standing committees were given a role in the development of legislation and were able to develop and present their recommendations to the select committee.

To develop legislation matched to a strategic policy goal, it seems axiomatic that the House would need the expertise of the standing committees of jurisdiction, their members, and their staff, and needs their affirmative support of and participation in the legislative process.

¹⁷⁹ Rep. John J. Rhodes, "Ad Hoc Committee on Energy," *Congressional Record*, vol. 123, part 10 (April 21, 1977), p. 11550.

Time for Deliberation

Both in committee and on the floor, sufficient time is needed to debate legislation and vote on amendments—to build majorities, to consider and compromise, to achieve coherence, and to allow as many Members who want to participate to have some opportunity to do so. The Speaker can use his or her authority to set time limits to keep standing committees and select committees on track, and the Rules Committee can draft special rules resolutions that allow sufficient debate time and an appropriate amendment process. Momentum behind legislation can be lost by moving too slowly, but committees and Members can create obstacles if sufficient time is not allowed for deliberation.

Single Purpose

The Outer Continental Shelf, Energy, and Homeland Security (107th Congress) select committees were understood to have a specific purpose of reporting one piece of legislation on a specific subject. Each did so, and in each case the legislation was enacted.

The Select Committee on Homeland Security (108th Congress) had a largely unprecedented role. It was created for just one Congress, but was given legislative and oversight authority very much like that given to standing committees. It was also given a purpose very similar to a select committee created only as a study committee—to make recommendations on the rules of the House. It considered just a few pieces of legislation, but seemed at a disadvantage vis-à-vis the standing committees. It held oversight hearings on the new department, but the standing committees did also. It did, however, make comprehensive recommendations on House rules in response to the reorganization of the executive branch for homeland security.

Each of the four select committees succeeded in reporting on a single purpose.

Appendix. Speaker O'Neill's Letter to Members: Ad Hoc Committee on Energy

Speaker Thomas P. "Tip" O'Neill Jr.'s April 20, 1977, letter to the Members of the House on creation of the Ad Hoc Committee on Energy was inserted in the *Congressional Record* during debate on the resolution creating the select committee.¹⁸⁰ The letter is reproduced here.

U.S. HOUSE OF REPRESENTATIVES,

Washington, D.C., April 20, 1977.

DEAR COLLEAGUE: As you know, it is my intention to create a new ad hoc committee to facilitate consideration of the President's energy message. To this end, I have asked Jim Wright [the majority leader] to call up a resolution tomorrow establishing the committee.

The committee will be created around the President's speech. This will afford the committee an early opportunity to organize and perhaps hold general hearings.

Sometime next week the President will send his actual legislative recommendations to the Congress. This legislation will first be parceled out among the appropriate standing committees just as if no ad hoc committee existed. I will place a reporting deadline on consideration of the bill by the standing committees.

At the conclusion of this period, the legislation will be sequentially referred to the ad hoc committee. The committee will not have authority to change the recommendations reported by the standing committees. It will have authority to recommend amendments for consideration on the floor.

When this measure goes to the Rules Committee, I will recommend that the legislation reported by the standing committees be considered as an original bill, with the ad hoc committee amendments in order thereto. I will further recommend that on the floor each standing committee manage those portions of the bill that fall within its jurisdiction.

Of course, when the House finally goes to conference with the Senate on the energy legislation, primary responsibility will rest with representatives of each of the standing committees to settle differences relating to its portion of the bill. Throughout the process, it is my intention to protect the prerogatives of the standing committees, drawing on their experience and expertise.

What the ad hoc committee adds is an opportunity for comprehensive consideration of our national energy policy. It can function as a conference committee of the House to facilitate resolution of competing claims. This should help smooth matters on the floor.

The membership of the ad hoc committee will be proportionate to the standing committees' jurisdiction over the legislation. In addition, I will do my best to see that every interest and region is fairly represented.

I hope that you can join me in supporting this attempt to respond innovatively and responsibly to the President's recommendations. Dealing with them will be among the most difficult and important challenges facing the Congress in this generation.

With every good wish,

¹⁸⁰ Rep. John D. Dingell, "Ad Hoc Committee on Energy," *Congressional Record*, vol. 123, part 10 (April 21, 1977), pp. 11552-11553.

Sincerely,
THOMAS P. O'NEILL, JR.

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